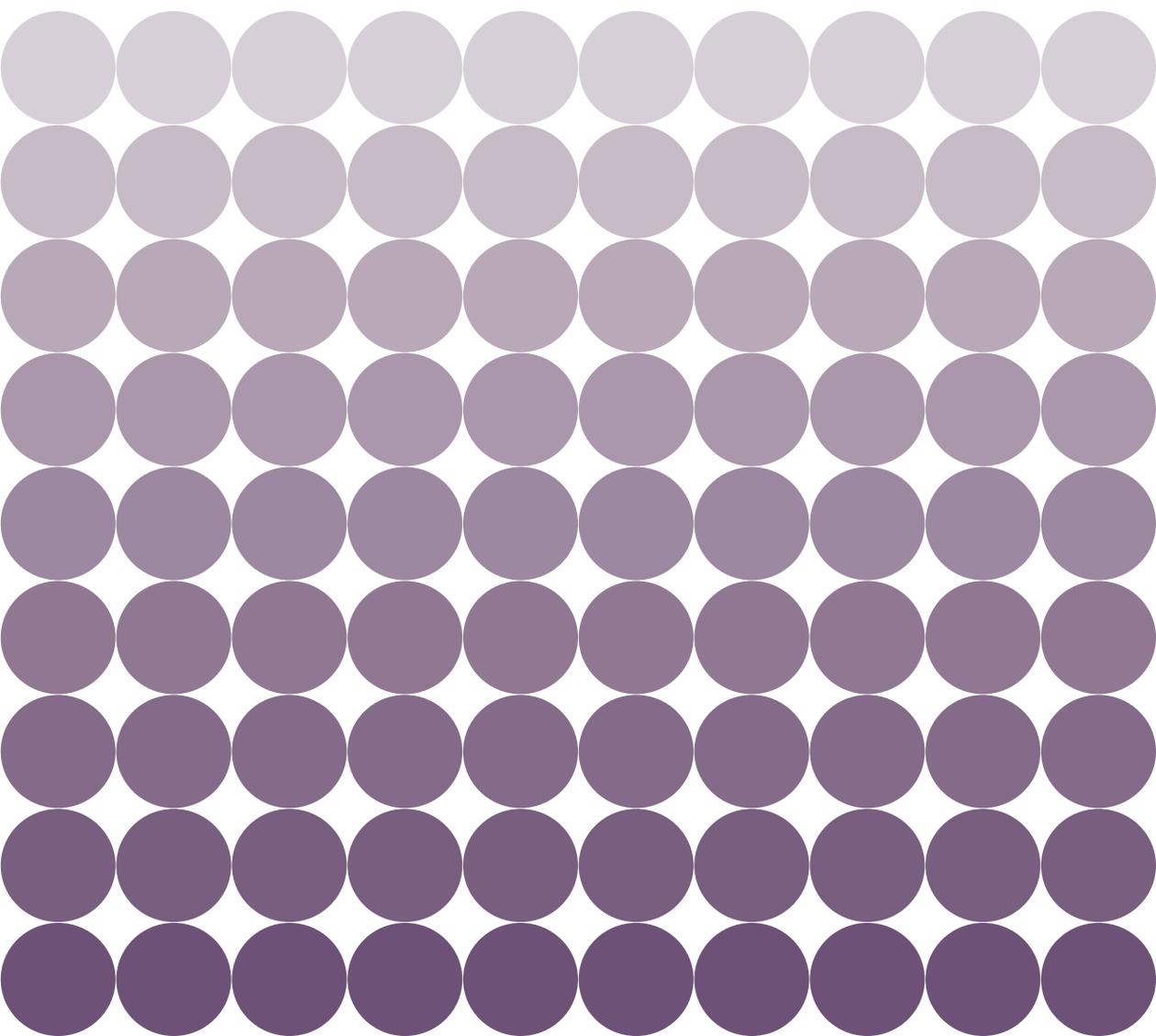


IMPLEMENTING AN ARMS TRADE TREATY

Lessons on Reporting and Monitoring
from Existing Mechanisms

PAUL HOLTOM AND MARK BROMLEY



STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

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SIPRI Policy Paper No. 28

PAUL HOLTOM AND MARK BROMLEY



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Preface

In 2012 there will be a rare opportunity for the international community to establish common, legally binding rules and standards for controlling legal arms transfers when a conference to negotiate an arms trade treaty (ATT) convenes. A central element of the ATT negotiations is the idea that states parties should be legally obliged to demonstrate their implementation of the treaty and to provide information on their international arms transfers. Such an ATT reporting mechanism, if it can achieve its envisioned goals, will generate unprecedented transparency in the international arms trade.

This Policy Paper provides the first comprehensive overview of existing United Nations instruments that require states to report on their arms transfers, transfer controls and enforcement measures. The authors—Dr Paul Holtom and Mark Bromley—are among the leading experts in the world examining arms trade transparency issues, and are particularly well placed to carry out this study. They outline the types of information that assessment of compliance with an ATT will require, extract lessons learned from the existing instruments and identify areas of duplication. In doing so, they have laid the foundations for a relevant and robust ATT reporting mechanism. In particular, they highlight the positive contributions made by non-governmental organizations to the monitoring of international arms transfers and the implementation of national transfer controls. Moreover, by investigating the challenges that states face when reporting to existing mechanisms and providing constructive solutions, this report will facilitate the negotiations on how to assess compliance with an ATT.

Thanks are due to the Humanitarian Disarmament section of the Norwegian Ministry of Foreign Affairs for its generous financial support for this study and to all those government officials who completed and returned the SIPRI questionnaires on reporting to the UN instruments. The authors are particularly grateful for the comments received from Rachel Stohl and from SIPRI colleagues Dr Ian Anthony, Dr Sibylle Bauer, Pieter Wezeman and Siemon Wezeman. Thanks also to Ken Epps, Frank Slijper and Nic Marsh for their comments on parts of chapter 4. Special thanks are also extended to Henning Weber and Lucie Béraud-Sudreau for their assistance in the distribution and collection of the questionnaires and preparation of SIPRI Fact Sheets on national reports on arms exports and the UN Register of Conventional Arms. The questionnaires were translated into Arabic, French, Russian and Spanish by colleagues Tahseen Zayouna, Clare Franchini, Vitaly Fedchenko and Carina Solmirano. Special mention should also be given for the invaluable advice and support provided by the SIPRI editors, especially Jetta Gilligan Borg, and the SIPRI Library under Nenne Bodell.

Dr Bates Gill
Director, SIPRI
July 2011

Summary

The aims, scope and coverage of an arms trade treaty (ATT) will determine the format and types of information to be provided to an ATT reporting mechanism. It is expected that one of the obligations under the mechanism will be for states parties to provide information on their arms transfers and transfer control systems. A key consideration when designing an ATT reporting mechanism is its future interaction with existing reporting mechanisms. In this context, voluntary reporting of information on arms transfers to the United Nations Register of Conventional Arms (UNROCA) and of information on transfer control systems to the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA) and the UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology (UN Legislation Exchange) are particularly relevant. Other UN instruments that provide potential lessons and areas of potential overlap, include UN Security Council resolutions imposing arms embargoes and UN Security Council Resolution 1540, which obligate states to provide information on aspects of national transfer controls. At the regional level, member states of the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE) and the Economic Community of West African States (ECOWAS) are requested to provide information on transfer controls and international arms transfers, while members of the Organization of American States (OAS) are required to provide information on arms acquisitions. It is inevitable that the reporting requirements under an ATT will overlap with some of these instruments, particularly the voluntary UN reporting mechanisms. If an ATT is to increase transparency, then existing obligations should serve as the baseline for reporting under the new treaty.

A common characteristic of these UN instruments is the lack of universal participation, with states facing a range of challenges to reporting. Reporting to UNROCA is particularly affected by political and security factors. State capacity is regarded as an important factor in reporting to all UN instruments. Responses to SIPRI questionnaires on experiences in compiling and submitting reports to UNROCA, the POA and the UN Legislation Exchange reveal that the collection of information required for reports to these instruments involves inter-agency cooperation. The challenges cited by a majority of respondents relate to the availability of information, inter-agency cooperation and personnel issues. Respondents to the POA questionnaire also highlighted lack of time. Improved mechanisms for inter-agency coordination have helped several states develop better systems for compiling national reports and are therefore essential for the generation of, and access to, relevant information to help facilitate reporting. A standardized reporting template greatly facilitates reporting to these instruments, but online reporting tools can be of limited use when compiling a report involves input from several different government ministries or agencies.

Non-governmental organizations (NGOs) will play a key role in monitoring implementation of an ATT and assessing its role in helping to prevent illicit and irresponsible arms transfers. Specific activities for NGO monitoring could include (a) gathering information on states' arms transfers, (b) uncovering illegal or illicit arms transfers, (c) assessing the extent to which states are complying with the criteria of an ATT, and (d) evaluating whether states' transfer control systems allow them to implement an ATT effectively. A number of NGOs and academic researchers have already developed tools and methodologies for monitoring arms transfers and the implementation of transfer controls that could also be used to ensure the functioning of a robust ATT.

Three types of information should be reported under an ATT. First, information on arms transfers should be provided because 'the ATT should serve as a confidence-building measure that enhances transparency in the conventional arms trade'. An ATT reporting system should be distinct from UNROCA. It should require regular reporting on arms transfers on a standardized reporting form that clearly outlines the types of information requested from states (e.g. importer state, exporter state, category, quantity, designation, description of condition, description of conditions of the transfer, information on mode of transport and route). Reporting on transfers of ammunition, spare parts and components, technology and licensed production arrangements will require creative thinking. An ATT should require states to keep records of authorizations and deliveries, making it possible for states to provide information on both.

Second, information on the key elements of national transfer control systems should be reported in order to show how a state is implementing its commitments under an ATT. Reporting on implementation of UN Security Council Resolution 1540 offers a useful model for such a system. On ratifying the ATT, a state should be obligated to provide a one-off report containing information on its implementation of the treaty. This information should be updated whenever legislation, procedures, documents or contact points change. Guidance will need to be provided to assist with reporting; this could be provided by a user's guide or an active implementation support unit (ISU). Good quality information generated after interaction between states and an ISU or group of experts is particularly useful for assessing implementation and assistance needs. Information reported, or omitted from reports, can be used to assess implementation of obligations under an ATT and identify areas where international assistance may be required. At the same time, states should also provide information on assistance requested, received, rendered or offered.

Third, information on enforcement efforts to prevent transfer control violations and combat arms trafficking should be provided to demonstrate national implementation. This could include reporting on measures to prevent violations, such as outreach to industry. It could also include reporting on trafficking interceptions and entities convicted of violations. An ad hoc approach could be taken to the exchange of information on significant seizures.

Abbreviations

APM	Anti-personnel mine
ATT	Arms trade treaty
BMS	Biennial meeting of states
CCM	Convention on Cluster Munitions
Comtrade	United Nations Commodity Trade Statistics Database
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End-user certificate
GGE	Group of Governmental Experts
ISU	Implementation support unit
NCP	National contact point
NISAT	Norwegian Initiative on Small Arms Transfers
NGO	Non-governmental organization
OAS	Organization of American States
OEWG	Open-Ended Working Group
OSCE	Organization for Security and Co-operation in Europe
POA	United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects
SALW	Small arms and light weapons
TIV	Trend-indicator value
UN	United Nations
UNIDIR	United Nations Institute for Disarmament Research
UNODA	United Nations Office for Disarmament Affairs
UNROCA	United Nations Register of Conventional Arms

1. Introduction

In 2012 the United Nations will convene a conference to negotiate an arms trade treaty (ATT). This will be a rare opportunity for the international community to establish common, legally binding rules and standards for controlling the activities of everyone involved in legal arms transfers including, states, arms-producing companies, arms brokers, non-state groups and individuals. An ATT should help to minimize the risk that arms are diverted to the illicit market; ensure that arms are not delivered to entities that will use them to violate human rights, international law and international humanitarian law; and reduce the likelihood that arms acquisitions will result in the unnecessary diversion of the world's human and economic resources or foster corrupt practices.

A central element of the negotiating process on an ATT is how and to what extent states parties should be legally obliged to provide information demonstrating their implementation of the operative provisions of an ATT for consideration by peers and the public. Thus far states have made few concrete proposals for how a reporting mechanism would function or what information states would be required to provide. Opinions also differ as to the frequency, content and even purpose of reporting. Nevertheless, the ATT should significantly increase the transparency of international arms transfers.

A key consideration when designing an ATT reporting mechanism is its future interaction with existing voluntary obligations to report on international arms transfers and provide information on arms transfer controls. In this context, the United Nations Register of Conventional Arms (UNROCA), the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA), and the UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology (UN Legislation Exchange) are particularly relevant. Clearly, an ATT reporting instrument could duplicate parts of all of these instruments. It could also potentially build on and improve them, while incorporating the lessons learned from their application. However, a crucial distinction between reporting on implementation of an ATT and the above three UN instruments is that reporting to these instruments is voluntary, whereas under an ATT it will be mandatory.

Non-governmental organizations (NGOs) play a number of important roles in existing transparency mechanisms, including assessing states' implementation of treaty commitments and providing relevant background research. They have been heavily involved in the ATT negotiating process and are also likely to play a significant role in the treaty's implementation. As the final stages of the negotiating process near, it is important that states consider the role of NGOs in helping to implement and monitor implementation of an ATT.

Reporting in the arms trade treaty negotiations

In 2006 the UN General Assembly voted overwhelmingly in favour of Resolution 61/89, which among other things requested member states to provide their views on the ‘the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms’ and established a UN Group of Governmental Experts (GGE) to examine the issue.¹ In their responses, 40 states highlighted the need to create a monitoring mechanism for an ATT, with some of these states also among the 36 states that suggested the inclusion of regular or annual reporting requirements.² Only 13 states explicitly called for a register of international arms transfers based on reports submitted by states. The final report of the GGE noted that states had discussed how ‘national points of contact, promotion of regular implementation and transparency reports’ could play a role in assisting state ‘in implementing and evaluating a potential treaty’.³

On the basis of the UN Open-Ended Working Group (OEWG) report, the UN General Assembly adopted Resolution 64/48, which resolved to ‘convene the United Nations Conference on the Arms Trade Treaty to sit for four consecutive weeks in 2012 to elaborate a legally binding instrument on the highest possible common international standards for the transfer of conventional arms’.⁴ The resolution also called for four weeks of Preparatory Committee meetings to be convened before the 2012 conference. The first meeting was held in July 2010, the second in February–March 2011, and the third takes place in July 2011. The fourth and final meeting, on procedural matters, will be held in 2012.

Following discussions in the first Preparatory Committee meeting in July 2010, the ‘Facilitator’s summary on implementation and application’ noted that ‘mechanisms such as national legislation, transparency and international cooperation and assistance were seen as central to implementation’.⁵ The issues raised by states included the ‘possible obligation to report transfer decisions to a UN or other dedicated international database (to possibly include transfers and/or denials)’ with options for ‘reporting, information sharing and information exchange’, including ‘national reports on an annual basis’, using ‘standardized reporting forms’ and building on ‘existing reporting mechanisms including the UN Arms Register (without prejudice to discussions on scope or parameters)’. However, the summary also noted that states had raised the need for ‘careful consideration of confidentiality of sensitive information associated with reporting’. Transparency is the seventh item in the Preparatory Committee chair’s draft

¹ UN General Assembly Resolution 61/89, 6 Dec 2006.

² Parker, S., *Analysis of States’ Views on an Arms Trade Treaty* (UNIDIR: Geneva, Oct. 2007), p. 12.

³ United Nations, General Assembly, Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, A/63/334, 26 Aug. 2008, para. 26.

⁴ UN General Assembly Resolution 64/48, 2 Dec. 2009.

⁵ ‘Facilitator’s summary on implementation and application’, Arms Trade Treaty legal blog, 22 July 2010, <<http://armstradetreaty.blogspot.com/2010/07/day-1-of-prepcom.html>>.

paper of March 2011, with subheadings on reporting, information sharing, record keeping and consultation and will be discussed at the July 2011 Preparatory Committee meeting.⁶

The focus of this Policy Paper

This Policy Paper aims to lay the foundation for a relevant and robust ATT reporting mechanism by (a) facilitating discussion on the types of information required to assess compliance with an ATT, based on a review of information already provided to multilateral instruments for assessing national transfer controls and arms transfers; (b) providing ‘lessons learned’ from the reporting to relevant multilateral instruments, paying particular attention to challenges for state reporting; and (c) highlighting the positive contribution made by NGOs to the monitoring of international arms transfers and implementation of national transfer controls. It provides a comprehensive mapping of the existing obligations of UN member states to report to peers and the public on their international arms transfers, transfer control systems and efforts to prevent and combat arms trafficking.

Chapter 2 of this Policy Paper focuses on instruments in the field of arms transfer controls and arms transfers that have the potential to overlap with a future ATT reporting instrument. It provides information on the purpose, scope, practicalities and levels of reporting for each instrument. Chapter 3 analyses states’ experiences in compiling and submitting reports to UNROCA, the POA and the UN Legislation Exchange, highlighting the factors that facilitate and hinder reporting. It presents the results of a survey of UN member states that sought to identify the technical challenges that states face in meeting existing reporting requirements and the tools developed to overcome these challenges. The chapter emphasizes potential ‘lessons learned’ for systems of reporting under an ATT. Chapter 4 documents existing NGO-led activities of relevance for monitoring implementation of an ATT and details non-governmental efforts to monitor and measure international arms transfers, document transfers to regions of tension and evaluate states’ arms transfer control systems. Chapter 5 presents options for consideration in the design of an ATT reporting mechanism. Chapter 6 contains general conclusions and recommendations for an ATT reporting mechanism that provides meaningful information on transfer controls and arms transfers, as well as thoughts on the role of NGOs in ensuring treaty implementation and compliance.

⁶ ‘Chairman’s draft papers: 3 Mar. 2011’, Arms Trade Treaty legal blog, <<http://armstradetreaty.blogspot.com/2010/07/day-1-of-prepcom.html>>.

2. International reporting mechanisms on arms transfers and transfer controls

Since the early 1990s an increasing number of international, regional and national transparency mechanisms have been developed for reporting on arms transfers, national transfer control systems and efforts to prevent and combat arms trafficking. These mechanisms contain provisions that are likely to overlap with an ATT reporting mechanism. At the international level, UN General Assembly resolutions have urged UN member states to report to the UN on their international arms transfers to UNROCA and to provide information on transfer controls and enforcement measures under the POA and the UN Legislation Exchange. UN Security Council resolutions imposing arms embargoes and UN Security Council Resolution 1540 oblige states to provide information on the implementation of transfer controls and enforcement measures.⁷ At the regional level, member states of the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE) and the Economic Community of West African States (ECOWAS) are likewise requested to provide information on transfer controls and international arms transfers; and members of the Organization of American States (OAS) are required to provide information on arms acquisitions.⁸

This chapter maps the most relevant existing multilateral and national reporting mechanisms on international arms transfers and national transfer controls, focusing primarily on UN instruments, although regional reporting instruments are also considered.⁹ It provides an overview of (a) the purpose of reporting, (b) the scope of reporting, (c) the practicalities involved in reporting including support rendered by the UN Office for Disarmament Affairs (UNODA) or relevant secretariat, and (d) the levels of participation in each instrument. The overview identifies current commitments and good practices as well as the minimum standards to be expected of an instrument for reporting on implementation of an ATT and international arms transfers.

⁷ UN Security Council Resolution 1540, 28 Apr. 2004. On current and past UN arms embargoes see the SIPRI Arms Embargoes Database, <<http://www.sipri.org/databases/embargoes>>.

⁸ This chapter does not discuss national reports on arms exports and export controls. Instead see Weber, H. and Bromley, M., 'National reports on arms exports', SIPRI Fact Sheet, Mar. 2011, <http://books.sipri.org/product_info?c_product_id=423>.

⁹ This report does not discuss reporting mechanisms attached to supplier regimes, such as the Wassenaar Arrangement, the Missile Technology Control Regime etc. This report also does not consider the annual exchange of military information under the Vienna Document and the Global Exchange of Military Information (GEMI), both of which are implemented under the auspices of the OSCE. Although the annual exchange of military information and the GEMI involve the sharing of information on arms acquisitions, they are primarily focussed on exchanging information on military holdings as a means of building confidence and therefore lie outside the scope of this Policy Paper. The OAS Transparency Convention has been included mainly because of its close relationship with UNROCA and the fact that acquisitions are primarily by import.

Voluntary reporting to United Nations instruments on international arms transfers and transfer controls

The United Nations Register of Conventional Arms

UNROCA was established by UN General Assembly Resolution 46/36L, on ‘Transparency in armaments’, in December 1991. All UN member states are requested to provide information on their imports and exports of major conventional weapons to UNROCA to help ‘prevent excessive and destabilizing accumulation of arms . . . in order to promote stability and strengthen regional or international peace and security [and to] enhance confidence, promote stability, help states to exercise restraint, ease tensions and strengthen regional and international peace and security’.¹⁰ All reporting to UNROCA is voluntary. UNROCA remains the key international mechanism for reporting on international arms transfers and has played an important role in promoting norms of transparency in international arms transfers in the post-cold war period. UNROCA served as a starting point for discussions on the types of arms to be covered by an ATT, but this link has been severed as states have realized that the scope of UNROCA is too limited. Nevertheless, consideration continues to be given to how an ATT reporting instrument will relate to UNROCA.

UNROCA acts as both an intergovernmental confidence-building mechanism and a public transparency instrument, since all submissions are reproduced on the website of the UNODA.¹¹ States that have neither imported nor exported any item covered by UNROCA are still requested to submit a ‘nil report’, in order to demonstrate their commitment to transparency and confidence-building regarding armaments. UNROCA lacks a mechanism for facilitating consultations on concerns raised by the information provided by states and for states to explain their acquisitions. This does not prevent such consultations taking place bilaterally or at the regional and subregional levels.

States are requested to provide information annually on the import and export of seven categories of conventional weapons: battle tanks, armoured combat vehicles, large-calibre artillery, combat aircraft, attack helicopters, warships, and missiles and missile launchers.¹² States are provided with a standardized reporting form for submitting information on international transfers of these categories of major conventional weapons, and a simplified form for submitting nil reports. The reporting form requests information on the quantity and type of weapons, and the exporting or importing state, and invites states to provide a description of the item and any additional comments on the transfer. Since 2003 states have also been invited to provide information on international transfers of small arms and light weapons (SALW). To further facilitate responses to this invitation, in

¹⁰ UN General Assembly Resolution 46/36L, 6 Dec. 1991.

¹¹ United Nations, Office for Disarmament Affairs, UN Register of Conventional Arms, <<http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml>>.

¹² States are also invited to provide information on military holdings and procurement from national production. This section discusses only international transfers of major conventional arms and small arms and light weapons.

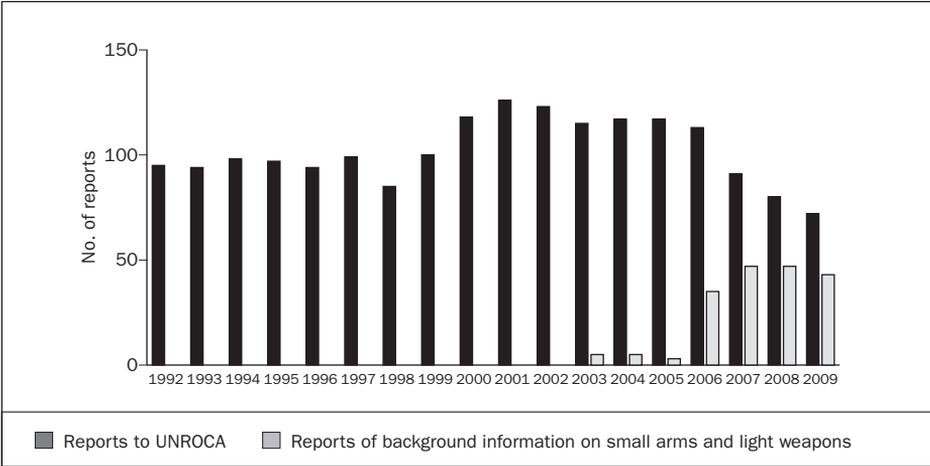


Figure 2.1. Reporting to UNROCA, 1992–2009

Source: UNROCA database, <http://disarmament.un.org/un_register.nsf>.

2006 a standardized reporting form was introduced that invites states to provide the same information on SALW transfers as for the seven main categories.¹³

UN member states are reminded of UNROCA's reporting requirements via a regular UN General Assembly resolution requesting state submissions to UNROCA,¹⁴ and an annual *note verbale* requesting states to provide information for UNROCA to the UNODA by 31 May together with the details of a national contact point (NCP). The UNODA serves as the depositary for submissions by states, collating them for the UN Secretary-General's report on UNROCA and entering the data contained in submissions into the online UNROCA database.¹⁵ It does not analyse, cross-check or seek clarification of the data included in submissions. The UNODA is also responsible for providing technical assistance for reporting in the form of an information booklet. The latest version dates from 2007 and is published in English, French and Spanish.¹⁶ In addition, since 1993 the UNODA has held 20 outreach seminars to raise awareness of UNROCA and explain the purpose and practicalities of reporting.

¹³ Holtom, P., *Transparency in Transfers of Small Arms and Light Weapons: Reports to the United Nations Register of Conventional Arms, 2003–2006*, SIPRI Policy Paper no. 22 (SIPRI: Stockholm, July 2008).

¹⁴ The most recent resolution is UN General Assembly Resolution 64/54, 2 Dec. 2009. When first established, states were requested to report to UNROCA by 30 Apr. each year. The deadline was extended to 31 May as a result of a recommendation of the GGE convened to consider developments relating to UNROCA in 1997. United Nations, General Assembly, Report on the continuing operation of the United Nations Register of Conventional Arms and its further development, A/52/316, 29 Aug. 1997, para 64(d).

¹⁵ Previously, the work was carried out by the UNODA's predecessors, the UN Centre for Disarmament Affairs (CDA) and the UN Department of Disarmament Affairs (DDA).

¹⁶ United Nations, Department for Disarmament Affairs, *Guidelines for Reporting International Transfers: Questions & Answers* (United Nations: New York, 2007); and United Nations, Department for Disarmament Affairs, *United Nations Register of Conventional Arms: Information Booklet 2007* (United Nations: New York, 2007). The booklet and guidelines are available at <http://www.un.org/disarmament/convarms/Register/HTML/Register_ReportingForms.shtml>.

Between 1993 and 2010, 174 UN member states reported to UNROCA at least once; 22 have never submitted a report.¹⁷ Thirty-seven UN member states have reported for each year in the period 1992–2009. Of the 174 states that have reported to UNROCA, 88 have submitted only nil reports, and 52 per cent of all reports submitted have been nil reports. The overall average annual reporting rate for the period 1992–2009 was 54 per cent. Levels of reporting vary between regions, with the Americas, Asia and Oceania, and Europe recording the highest levels of reporting and Africa and the Middle East the lowest.

The level of reporting has dropped in recent years (see figure 2.1). In 2002, 126 states (67 per cent of UN member states) submitted reports on their arms transfers in 2001, the highest number since the instrument was created. In 2010, 72 states (37 per cent) submitted reports on their arms transfers in 2009, the lowest number since the instrument was created. The decline in reporting largely corresponds with a decline in the number of states submitting nil reports, but several states that have regularly reported on imports and exports of conventional arms have also failed to report since 2008. The most frequently cited reasons provided by government experts to explain non-reporting relate to national security concerns and conflict, lack of political will, and limited administrative capacity.¹⁸ The lack of relevance of the seven UNROCA categories for the security concerns of states in the Americas, Africa, and the Middle East has also been given as a reason for non-reporting.¹⁹

Since 2003, 73 states have responded to the invitation to submit background information on international transfers of SALW. The annual average level of reporting for the years 2003–2005 was 3 per cent of UN member states, increasing to 22 per cent for the years 2006–2009 following the introduction of a standardized reporting form. The regional pattern for providing background information on SALW transfers is similar to that for reporting to UNROCA's seven categories: levels of participation by states in the Americas, Asia and Oceania, and Europe are higher than those of Africa and the Middle East.

¹⁷ On levels of reporting to UNROCA see Holtom, P., Béraude-Sudreau, L. and Weber, H., 'Reporting to the United Nations Register of Conventional Arms', SIPRI Fact Sheet, May 2011, <http://books.sipri.org/product_info?c_product_id=424#>.

¹⁸ United Nations (note 14), para. 17; and United Nations, General Assembly, Continuing operation of the United Nations Register of Conventional Arms and its further development, A/64/296, 14 Aug. 2009, para 38.

¹⁹ United Nations, General Assembly, Continuing operation of the United Nations Register of Conventional Arms and its further development, A/58/274, 13 Aug. 2003, para. 63; United Nations, General Assembly, Report on the continuing operation of the United Nations Register of Conventional Arms and its further development, A/61/261, 15 Aug. 2006, para. 51; United Nations, Office for Disarmament Affairs, 'Regional workshop for Western African states on transparency in armaments', UNODA Update Aug. 2009, <<http://www.un.org/disarmament/HomePage/ODAPublications/ODAUpdate/2009/Aug/index.html#5L>>; Deen, T., 'Arab nations insist on WMDs in UN arms register', Asian Tribune, 4 Nov. 2008, <<http://www.asiantribune.com/node/14037>>; and United Nations, General Assembly, United Nations Register of Conventional Arms, A/63/120, 14 July 2008, p. 137.

The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

The POA was adopted at the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001.²⁰ It outlines a set of measures to be implemented at the international, regional and national levels to counter the illicit trade in SALW, including (a) creating legislation, regulations and administrative procedures to control the production and transfer of SALW; (b) criminalizing the illegal manufacture, possession, stockpiling and trade of SALW; (c) marking of SALW; (d) improving the tracing of SALW; (e) seizing and collecting illegally possessed SALW; (f) destroying surplus SALW; and (g) implementing effective disarmament, demobilization and reintegration programmes. The POA proposes that states ‘make public’ their relevant national laws, regulations and procedures and encourages intergovernmental information exchanges to help tackle the illicit trade in SALW.²¹ States are also encouraged to provide information in national reports on implementation of the POA on a voluntary basis, including national transfer controls and brokering controls, information on seizures, and the routes and means used for trafficking, but not on actual transfers of SALW.²² There is clear scope for overlap with the coverage of a future ATT reporting instrument in all of these areas.

The main purpose of national reports is for states to exchange information on how they are implementing the POA. For example, states provide information on processes for the issuing of licences and other documentation for transfers, post-shipment controls, record keeping, sanctions for violations of transfer controls and, in some cases, information on seizures. Despite limitations the reports are ‘an important—and sometimes the only—source of information on states’ efforts to implement the PoA.²³ Some states also provide information on international assistance sought, received and rendered to help implement the POA, making national reports a useful source of information for identifying areas where states require assistance or where donor states are willing to render assistance.²⁴

The POA also suggested the establishment of NCPs for intergovernmental liaison as one measure to be taken to implement the POA.²⁵ This information is also provided in national reports; 151 UN member states and the Holy See reported having established national contact points by May 2010. However, in

²⁰ United Nations, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, 20 July 2001.

²¹ United Nations (note 20), para. II.23.

²² United Nations (note 20), para. II.33.

²³ Cattaneo, S. and Parker, S., *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of the National Reports Submitted by States from 2002 to 2008* (UNIDIR: Geneva, 2008), p. 3.

²⁴ United Nations, General Assembly, Report of the Third Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/BMS/2008/3, 20 Aug. 2008, para. 3.

²⁵ United Nations (note 20), para. II.5.

2010 the Small Arms Survey could only confirm the existence and identity of 53 NCPs.²⁶

Since 2001 the invitation to submit national implementation reports has been included in the annual UN General Assembly resolution on the illicit trade in SALW in all its aspects (the so-called Omnibus Resolution).²⁷ The 2006 Omnibus Resolution for the first time explicitly encouraged states to submit national reports on their implementation of the POA.²⁸ There is no fixed deadline for the submission of reports, but since 2007 states have been encouraged to submit national reports in advance of the biennial meeting of states (BMS).²⁹ The linking of reporting to the BMS was reinforced by the report of the 2008 BMS, which suggested that states should report on a biennial basis in an effort to reduce the burden of reporting and prevent reporting fatigue.³⁰ The General Assembly currently recommends that states provide a full report by January 2012 and thereafter provide updates every two years.³¹

The 2001 conference did not provide a standardized template for reporting on implementation of the POA. However, the UN Development Programme (UNDP), the UN Institute for Disarmament Research (UNIDIR), the UNODA and the Small Arms Survey jointly developed an assistance package that states can use to compile their national reports. It has been widely used.³² The online POA Reporting Tool draws on earlier templates and links paragraphs from the POA with questions whose answers assist in the production of a national report on implementation of the POA. States are encouraged to use the reporting tool for submitting their national reports.³³ The UNODA serves as a repository and posts reports on the joint POA and Implementation Support System (ISS) website.³⁴ The UNODA does not analyse or check the veracity of the information provided in national reports.

A total of 158 UN member states and the Holy See have submitted at least one report on implementation of the POA since 2002; 34 UN member states have never reported.³⁵ Levels of reporting vary significantly between regions, with Africa, the Americas and Europe recording the highest levels of reporting and Asia and Oceania and the Middle East the lowest. The correlation between reporting levels and biennial meetings of states is clear (see table 2.1). Following

²⁶ Parker, S., *Analysis of National Reports: Implementation of the UN Programme of Action on Small Arms and the International Tracing Instrument in 2009–10*, Occasional Paper of the Small Arms Survey no. 28 (Small Arms Survey: Geneva, May 2011), p. 27.

²⁷ This resolution has been tabled at the General Assembly annually since 2001. See UN General Assembly resolutions 56/24V, 24 Dec. 2001; 57/72, 22 Nov. 2002; 58/241, 23 Dec. 2003; 59/86, 3 Dec. 2004; 60/81, 8 Dec. 2005; 61/66, 6 Dec. 2006; 62/47, 5 Dec. 2007; 63/72, 2 Dec. 2008; 64/50, 2 Dec. 2009; UN and 65/64, 8 Dec. 2010.

²⁸ UN General Assembly Resolution 61/66, 6 Dec. 2006.

²⁹ UN General Assembly resolutions 62/47, 5 Dec. 2007; 63/72, 2 Dec. 2008; and 64/50, 2 Dec. 2009.

³⁰ United Nations (note 24), para. 29(a).

³¹ United Nations, Programme of Action, 'Reporting tool', <<http://www.poa-iss.org/reporting/>>.

³² Cattaneo and Parker (note 23), p. 3.

³³ UN General Assembly Resolution 63/72, 2 Dec. 2008.

³⁴ United Nations, Programme of Action, Implementation of Support System, <<http://www.poa-iss.org/PoA/PoA.aspx>>.

³⁵ Parker (note 26), p. 16.

Table 2.1. Annual reporting on implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

Year	2002	2003 ^a	2004	2005 ^a	2006 ^b	2007	2008 ^a	2009	2010 ^a	Total
Total reports	16	99	41	103	62	36	111	9	107	584

^a A biennial meeting of states took place in these years.

^b A review conference took place in this year.

Source: United Nations, Programme of Action, Implementation of Support System: PoA–ISS <<http://www.poa-iss.org/PoA/PoA.aspx>>.

the lowest ever level of reporting in 2009, concerns that the level of reporting was on the decline were alleviated when the second highest level of reporting occurred in 2010. Seven states reported for the first time in 2010.

The UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology

The UN Legislation Exchange was established by General Assembly Resolution 57/66 in 2002. The General Assembly resolution was adopted annually for the years 2002–2005 and then biennially from 2007.³⁶ The resolution notes that transfer controls are important tools for ‘disarmament, arms control and non-proliferation’ objectives and ‘the maintenance of international peace and security’. States are therefore invited to ‘enact or improve national legislation, regulations and procedures to exercise effective (transfer) controls’ and encouraged ‘on a voluntary basis’ to provide the UN Secretary-General, via the UNODA, with information on their transfer controls. The UN Legislation Exchange has three aims: (a) demonstrating commitment to ‘international disarmament and non-proliferation treaties’, (b) building confidence, and (c) assisting states that are in the process of developing legislation, regulations and procedures for controlling transfers of arms, military equipment and dual-use goods. An ATT reporting mechanism can be expected to require states to share information on their transfer control systems, and would therefore overlap with the UN Legislation Exchange. The aims of the exchange are also likely to be shared by an ATT.

In contrast to the POA and reporting under UN Security Council Resolution 1540 (discussed below), neither a standardized reporting template nor a set of guidelines have been developed for the UN Legislation Exchange. Five approaches can be identified in states’ voluntary reports to the UN Legislation Exchange: (a) 31 states have provided an overview of the main elements of national transfer controls, of varying length (1–20 pages), providing a summary of legislative provisions, procedures for licensing and assessment criteria, and identification of the government ministries and agencies that are responsible for implementing and enforcing transfer controls; (b) 7 states have provided a list of

³⁶ UN General Assembly resolutions 57/66, 22 Nov. 2002; 58/42, 8 Dec. 2003; 59/66, 3 Dec. 2004; 60/69, 8 Dec. 2005; and 62/26, 5 Dec. 2007.

relevant laws and secondary legislation on transfer controls; (c) 6 states have provided a statement indicating that they do not have national transfer controls; (d) 6 states have provided a copy of a law or secondary legislation on transfer controls; and (e) 2 states have provided a copy of the transfer control section of the national reports on implementation of the POA.³⁷ Thus, the majority of the states that have participated in the exchange have provided an overview of the key elements of their transfer control system, but the information provided varies greatly.

The information provided by states is available on the website of the UNODA.³⁸ Fifty-two UN member states and the Holy See have provided information at least once under the exchange; 14 states have reported more than once. Europe accounts for more than half of the states that have participated in the exchange, followed by states from the Americas, Asia and Oceania, Africa and the Middle East. Eighteen states participated in the exchange in 2004, the highest number, with 14 states participating in 2008 and 2010, 11 in 2009 and 10 in 2005.

Reports mandated by United Nations Security Council resolutions

Reporting to the 1540 Committee

Security Council Resolution 1540 requires states to put in place ‘appropriate’ and ‘effective’ laws that prohibit any non-state actor—primarily terrorists—from manufacturing, acquiring, possessing, developing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery and to provide controls over legal transfers.³⁹ In addition, states are required to enforce effective border controls and law enforcement efforts against trafficking,⁴⁰ and must impose sanctions for violations. For many states, the laws, administrative procedures and agencies controlling transfers or preventing trafficking in dual-use goods and technologies overlap with those for conventional weapons. Therefore, information provided in accordance with Resolution 1540 could also be contained in reports provided by states parties to demonstrate implementation of an ATT.

Resolution 1540 established a committee to facilitate implementation of its operative provisions. The 1540 Committee is a subsidiary body of the UN Security Council and consists of the 15 members of the Security Council. It is supported by an expert group and working groups on (a) monitoring and national implementation, (b) assistance, (c) cooperation with international organizations, and (d) transparency and media outreach. Resolution 1540 called on states to submit a report to the 1540 Committee on their implementation of the operative provisions of the resolution before 28 October 2004. States were also ‘encouraged ... on a voluntary basis’ to include ‘summary action plans mapping out their

³⁷ In addition, Cambodia has provided information to this exchange on events that it has organized or participated in relating to SALW transfer controls.

³⁸ UN General Assembly Resolution 64/40, 2 Dec. 2009.

³⁹ UN Security Council Resolution 1540, 28 Apr. 2004, para. 2.

⁴⁰ UN Security Council Resolution 1540, 28 Apr. 2004, para. 3(c) and (d).

priorities and plans for implementing the key provisions of resolution 1540' to the 1540 Committee.⁴¹ Two subsequent Security Council resolutions, resolutions 1673 and 1810, have encouraged states to provide an initial report or update previously submitted information.⁴² In April 2011, UN Security Council Resolution 1977 extended the mandate of the 1540 Committee for 10 years until 25 April 2021.⁴³

States were not provided with a standardized reporting template when first asked to report; instead they were expected to 'follow the structure of the resolution'.⁴⁴ As a consequence, the content of the first reports varied widely. However, the 1540 Committee's group of experts used these reports to answer a series of questions that it had developed based on the operative provisions contained in Resolution 1540. This information was refined in the light of information provided by states. As a result of this process, in 2005 the group of experts provided to the 1540 Committee a matrix into which the group of experts had entered information on national implementation from national reports and other publicly available information for every UN member state, whether it had reported or not. These matrices were then made publicly available and states were free to update and amend their contents. The 1540 Committee has explicitly stated that the matrices 'are not a tool for measuring the compliance of States with their non-proliferation obligations' but are rather intended as a tool for dialogue with states on implementation of Resolution 1540 to help identify areas in need of attention and technical assistance. The 1540 Committee has also developed a database of legislation based on national reports and other publicly available information. This active collection and presentation of information contrasts with the more passive role played by the UNODA in simply collecting submissions to the UN instruments discussed above.

A comprehensive review of the implementation of Resolution 1540 took place in October 2009, with an exchange of views and experiences by UN member states and international organizations and an open day at which NGOs presented relevant projects and ideas.⁴⁵ During the exchange of states' views, a number of states stressed that they required clear guidance and definitions to help them enact and enforce legislation that complied with the obligations placed on them by Resolution 1540.⁴⁶ The need for assistance in this regard, as well as for those

⁴¹ United Nations, 1540 Committee, 'Guidelines for the preparation of national reports pursuant to resolution 1540 (2004)', <<http://www.un.org/sc/1540/guidelinesforatrep.shtml>>.

⁴² UN Security Council resolutions 1673, 27 Apr. 2006; and 1810, 25 Apr. 2008.

⁴³ UN Security Council Resolution 1977, 20 Apr. 2011, Article 2.

⁴⁴ Andemicael, B. et al., 'Assess the existing templates, particularly the 1540 Committee matrix, in light of the information gathered for the 2006 and 2008 reports', Background paper, Comprehensive Review on the Status of Implementation of Resolution 1540 (2004), UN 1540 Committee, <<http://www.un.org/sc/1540/ComprehensiveReview-OpenMeeting.shtml>>.

⁴⁵ For a summary of the event see Kraig, M. R., *United Nations Security Council Resolution 1540 at the Crossroads: The Challenges of Implementation* (Stanley Foundation: Muscatine, IA, 1 Oct. 2009). For background papers, the final report and other relevant materials see United Nations, 1540 Committee, Comprehensive Review of the Status of Implementation of Resolution 1540 (2004), <http://www.un.org/sc/1540/comprehensive_review.shtml>.

⁴⁶ Hart, J. and Clevestig, P., 'Reducing security threats from chemical and biological materials', *SIPRI Yearbook 2010: Armaments, Disarmament and International Security* (Oxford University Press: Oxford,

states that had not reported, was also raised during this review. In 2010 the 1540 Committee revised its procedures for responding to requests for assistance and matchmaking to further facilitate the request for and provision of international assistance.⁴⁷

As of April 2011, 164 states and the EU had submitted at least one report on their implementation of Resolution 1540.⁴⁸

Reporting on the implementation of UN Security Council arms embargoes

UN arms embargoes are imposed by resolutions adopted by the UN Security Council under the authority of Chapter VII, Article 41, of the UN Charter. They legally oblige UN member states to ‘prohibit the sale or supply of arms, ammunition, military equipment and related services, implement a general and complete embargo on all deliveries of weapons and military equipment’, or use words of similar intent. The embargoes implicitly require states to have in place systems to control transfers of conventional arms. Presumably, an ATT will make reference to states’ obligations to enforce UN arms embargoes.

The UN Security Council has established sanctions committees to oversee the implementation of arms embargoes and other sanctions imposed since 1990.⁴⁹ In general, UN members, regional organizations, UN peacekeepers, UN sanctions monitors and NGOs provide information to such committees on an ad hoc basis on suspected and reported violations of the sanctions regime. In some cases, Security Council resolutions imposing or extending sanctions call on UN member states to report on their measures to implement arms embargoes. As of May 2011 UN member states are called on to report on their implementation of 6 of the 11 UN arms embargoes in force (see table 2.2). States provide information in these reports on legislation to control arms transfers and, in a limited number of cases, on enforcement. Therefore, information contained in these reports could also be included in reports on implementation of an ATT.

While a large number of UN member states have reported on their implementation of sanctions on al-Qaeda, the Democratic People’s Republic of Korea (DPRK, or North Korea), Iran and the Taliban, reporting is not universal. Furthermore, the Panel of Experts appointed to monitor implementation of the sanctions imposed on Iran found that ‘only half of the reports submitted provided sufficient detail to enable the Panel to assess them as required’.⁵⁰ The panel

2010), pp. 417–18. For further analysis of the implementation of Resolution 1540 see the reports of the Stanley Foundation’s project, ‘1540 Hub’, <<http://www.stanleyfoundation.org/programs.cfm?id=29>>.

⁴⁷ United Nations, 1540 Committee, ‘Assistance requests and offers’, <<http://www.un.org/sc/1540/assistance.shtml>>.

⁴⁸ United Nations, 1540 Committee, ‘Frequently asked questions on UNSC Resolution 1540’, <<http://www.un.org/sc/1540/faq.shtml#11>>.

⁴⁹ Exceptions to this rule are the UN arms embargo on non-governmental armed forces in Lebanon (2006) and the UN arms embargo on non-governmental forces in Darfur, Sudan (2004). The arms embargo on non-governmental forces in Iraq also currently lacks a sanctions committee monitoring mechanism. United Nations, Security Council Committee established pursuant to Resolution 1518 (2003), Annual report of the Security Council Committee established pursuant to Resolution 1518 (2003), S/2011/40, 28 Jan. 2011, para. 9.

⁵⁰ United Nations, Security Council, Final report of the Panel of Experts Established Pursuant to Resolution 1929 (2010) (undated), <<http://www.innerecitypress.com/1929r051711.pdf>>, para. 30.

Table 2.2. Reporting on implementation of United Nations sanctions, including arms embargoes, as of May 2011

Target of sanctions	No. of states making submission	Years of reporting	Reports available online
Somalia	33	2009–10	No
Eritrea	32	2010	No
Taliban and al-Qaeda	153	2003–2009	Yes
Democratic Republic of the Congo	21	2008–2009	Yes
North Korea	85 ^a	2006, 2009	Yes
Iran	100 ^a	2006–2008, 2010	Yes
Libya ^b	–

^a The European Union also submitted a report on the implementation of these sanctions.

^b The *note verbale* requesting reports on implementation of the sanctions on Libya was only issued on 25 Mar. 2011.

Source: United Nations, Security Council sanctions committees, <<http://www.un.org/sc/committees/>>.

stated that ‘it would be very useful to have States reporting not only on their legislation, but also on enforcement of sanctions and on their practical experience and challenges of implementation’. It therefore prepared guidance for states’ reporting on implementation for consideration by the Sanctions Committee on Iran. This guidance could also be of use for considering the type of information to be provided to demonstrate enforcement of transfer controls under an ATT.

Regional reporting instruments on arms transfers

This section considers four regional instruments for reporting on transfers of conventional weapons or only SALW transfers. The first two cases deal with intergovernmental transparency mechanisms that make information publicly available on transfers of a fairly wide range of arms. The third and fourth cases concern intergovernmental transparency mechanisms that focus on SALW and do not make information exchanged between states publicly available.

The European Union annual report on arms exports

Under the EU’s legally binding Common Position establishing common rules governing the control of exports of military technology and equipment (Common Position), EU member states are required to exchange data on the financial value of their export licences approved and actual exports along with information on their denials of arms export licences.⁵¹ The exchange was initially conceived to

⁵¹ The EU Common Position was introduced in Dec. 2008 to replace the politically binding EU Code of Conduct on Arms Exports, which was agreed in June 1998. Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008, pp. 99–103; and Council of the European Union, EU Code of Conduct on Arms Exports, 8675/2/98 Rev. 2, Brussels, 5 June 1998.

promote harmonization of EU member states' export policies in line with the criteria contained in the 1998 EU Code of Conduct on Arms Exports and the Common Position relating to issues such as obligations under international law, the prevention of conflict and human rights abuses, and economic development. Although originally intended to be a confidential exchange of information, data on licences and exports, along with aggregated data on denials, have been made publicly available via the EU annual report on arms exports since 1999. The 12th annual report was published in January 2011 and covers transfers during 2009.⁵²

Since the sixth EU annual report, states have been asked to submit data on the financial value of both arms export licences and actual arms exports, broken down by destination and the 22 categories of the EU Common Military List.⁵³ This information is reproduced in the EU annual report. In April 2008 EU member states agreed to publish information on approvals and denials of brokering licences in the EU annual report.⁵⁴ Therefore the 11th and 12th annual reports contain information on brokering licences granted and denied by EU member states, providing information on either destination or individual licence—depending on the reporting state—and include details of the destination of the goods, the origin of the goods, their financial value, their EU Common Military List category and the quantity of items involved. Eleven EU member states provided such information for both the 11th and 12th annual reports.

The EU annual report has developed into an important transparency mechanism. All 27 EU member states have supplied information to the report since 2008, in line with obligations contained in the Common Position (see table 2.3). However, not all states provide a full submission. Several states cite technical difficulties with collecting and submitting data on actual arms exports disaggregated by EU Common Military List category. The three largest arms exporters in the EU—France, Germany and the United Kingdom—all failed to make full submissions to recent annual reports.⁵⁵

⁵² Bauer, S. and Bromley, M., *The European Union Code of Conduct on Arms Exports: Improving the Annual Report*, Policy Paper no. 8 (SIPRI: Stockholm, Nov. 2004), p. 5; and Bromley, M., *The Impact on Domestic Policy of the EU Code of Conduct on Arms Exports: The Czech Republic, the Netherlands and Spain*, SIPRI Policy Paper no. 21 (SIPRI: Stockholm, May 2008).

⁵³ For the latest version see Council of the European Union, Common Military List of the European Union, adopted 15 Feb. 2010, *Official Journal of the European Union*, C69, 18 Mar. 2010.

⁵⁴ Council of the European Union, Tenth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports, *Official Journal of the European Union*, C300, 22 Nov. 2008, p. 3. For more on reporting on brokering licences within the EU see Bromley, M. and Holtom, P., 'Transparency in arms transfers', *SIPRI Yearbook 2010* (note 46), pp. 327–28.

⁵⁵ Bromley and Holtom (note 54), p. 326.

Table 2.3. Number of states submitting information on international arms transfers to the European Union annual report, 1998–2009

Annual report	Year covered	No. of states making submission	No. of states making full submission ^a	Proportion of states making full submission (%) ^a
12th	2009	27	17	63
11th	2008	27	19	70
10th	2007	27	16	59
9th	2006	25	16	64
8th	2005	25	17	68
7th	2004	25	13	52
6th	2003	22 ^b	6	27
5th	2002	15	7	47
4th	2001	15	9	60
3rd	2000	15	6	40
2nd	1999	15	13	87
1st	1998	15	11	73

^a A full submission is taken to be data on the financial value of both arms export licences issued and actual exports, broken down by both destination and EU Common Military List category.

^b Because the 6th annual report covers export licences issued and actual exports in 2003, the 10 member states that joined the EU in May 2004 were not obliged to submit data. Instead, they were invited to submit figures for 2003 if they were available, which 7 of them did.

Source: EU annual reports are available at Council of the European Union, 'Security-related export controls II: military equipment', <<http://www.consilium.europa.eu/showPage.aspx?id=1484>>.

The Inter-American Convention on Transparency in Conventional Weapons Acquisition

The 1999 Inter-American Convention on Transparency in Conventional Weapons Acquisition entered into force in 2002. The convention is intended to promote 'regional openness and transparency in the acquisition of conventional weapons by exchanging information regarding such acquisitions, for the purpose of promoting confidence among States in the Americas'.⁵⁶ States parties are legally obliged to provide an annual report on arms acquisitions, using a standardized reporting template, to the Organization of American States. The reports are made publicly available on the OAS website.⁵⁷ The scope of the convention covers the same seven categories as UNROCA, and states are also required to provide information on quantity, type, importing or exporting state and other information. In addition to imports, states are required to report acquisitions from domestic arms producers, and all acquisitions must be reported 'no later than 90 days after incorporation . . . of the weapons into the inventory of the armed forces'.⁵⁸

⁵⁶ Inter-American Convention on Transparency in Conventional Weapons Acquisitions, adopted 7 June 1999, entered into force 21 Nov. 2002, <<http://www.oas.org/juridico/english/treaties/a-64.html>>, Article 2.

⁵⁷ Organization of American States, 'Conventional weapons: documents', <<http://www.oas.org/csh/english/conventionalweapons.asp#Docs>>.

⁵⁸ Inter-American Convention (note 56), Article 4.

Table 2.4. Number of states submitting information on arms acquisitions to the Inter-American Convention on Transparency in Conventional Weapons Acquisition, 2004–2009

Year covered by submission	No. of state signatories	No. of states parties due to report	No. of states making submission	Proportion of states parties reporting (%)
2009	20	13	6 ^a	46
2008	20	12	7 ^b	58
2007	20	12	4 ^c	33
2006	20	12	3 ^c	25
2005	20	10	4 ^c	40
2004	20	9	1	11

^a Brazil submitted a notification of imports for 2009.

^b Argentina included information on small arms and light weapons imports in its annual report for 2008. Chile submitted notifications of imports for 2008, but did not provide an annual report.

^c Peru submitted a single report in May 2009 containing information for the period 2005–2008, including information on imports of SALW.

Sources: Inter-American Convention on Transparency in Conventional Weapons Acquisitions, Update on the status of signatures and/or accessions presented by the Department of International Law of the Secretariat for Legal Affairs, First Conference of the States Parties to the Inter-American Convention on Transparency in Conventional Weapons Acquisitions, Washington, DC, 3 Dec. 2009, OEA/Ser.K/XLIV.1 CITAAC/CEP/doc.3/09 corr. 1, 1 Dec. 2009; and Organization of American States, Permanent Council, Committee on Hemispheric Security, <<http://www.oas.org/csh/english/conventionalweapons.asp>>.

As of May 2011, 13 states had ratified the convention and 8 states parties had provided an annual report on acquisitions and exports at least once (see table 2.4).⁵⁹ Therefore, despite the obligation for states parties to provide annual reports on arms acquisitions, and the option for states to submit nil reports, reporting levels have only once been above 50 per cent. Furthermore, only two states—Brazil and Chile—have submitted information on acquisitions within the 90-day deadline.⁶⁰ In 2009, eight OAS member states provided their UNROCA reports to the OAS, including two—Mexico and the USA—that are not party to the convention.

The annual exchange of information under the OSCE Document on Small Arms and Light Weapons

In November 2000 the participating states of the Organization for Security and Co-operation in Europe adopted the OSCE Document on Small Arms and Light Weapons (SALW Document), which outlined a range of commitments for states in recognition of the fact that ‘the excessive and destabilizing accumulation and uncontrolled spread of small arms . . . poses a threat and a challenge to peace’.⁶¹ It

⁵⁹ The Bahamas has also submitted a report but is not a party to the convention.

⁶⁰ Organization of American States, Permanent Council, Committee on Hemispheric Security, <<http://www.oas.org/csh/english/conventionalweapons.asp>>.

⁶¹ Organization for Security and Co-operation in Europe (OSCE), OSCE Document on Small Arms and Light Weapons, 24 Nov. 2000, para. 1, section I.

Table 2.5. Number of states submitting information on international small arms and light weapon transfers to the Organization for Security and Co-operation in Europe exchange, 2002–2008

Year of report	No. of OSCE states	No. of states making submission	Proportion of OSCE states making submission (%)
2008	56	46	82
2007	56	42	75
2006	56	46	82
2005	56	48	86
2004	56	50	89
2003	56	47	84
2002	56	45	80

Source: Organization for Security and Co-operation in Europe (OSCE), ‘FSC Chairperson’s progress report to the Ministerial Council on implementation of the OSCE Document on Small Arms and Light Weapons’, MC.GAL/5/05, 30 Nov. 2005, p. 3; OSCE, ‘Further implementation of the OSCE Document on Small Arms and Light Weapons’, FSC Chairperson’s Progress Report to the 15th Ministerial Council, Madrid, MC.GAL/7/07, 14 Nov. 2007, p. 5; and OSCE, ‘The continuing implementation of the OSCE Document on Small Arms and Light Weapons’, FSC Chairperson’s Progress Report to the 16th Ministerial Council, Helsinki, MC.GAL/2/08/Rev.2, 13 Nov. 2008, p. 16.

also delineated the rationale, purpose and procedures for an annual inter-governmental exchange of information between the OSCE participating states on SALW transferred between the 56 OSCE participating states. The two main aims of the OSCE mechanism are (a) to act as an early-warning device by helping to identify destabilizing accumulations of SALW; and (b) to enhance transparency and confidence building among OSCE participating states.⁶² Using a standardized reporting form, states are requested to exchange in confidence information on deliveries of five subcategories of small arms and eight subcategories of light weapon for the preceding calendar year, including the importing or exporting state, the number of items, the state of origin (if not the exporter), any intermediate location and additional information. Spain and Ukraine have published the information that they exchanged on SALW transfers in their national reports. Other states’ information remains confidential. As table 2.5 shows, not all OSCE participating states have taken part in the exchange. OSCE participating states have also exchanged information on their end-user certificates (EUCs) and brokering controls.

⁶² Organization for Security and Co-operation in Europe (OSCE), ‘Further implementation of the OSCE Document on Small Arms and Light Weapons’, FSC Chairperson’s Progress Report to the 15th Ministerial Council, Madrid, document MC.GAL/7/07, 14 Nov. 2007, p. 12.

The ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials

The 2006 ECOWAS Convention, signed by the 15 member states, entered into force in 2009.⁶³ As of May 2011, 10 states had ratified the convention. It provides for a prohibition on the transfer of SALW by states parties and non-state actors. States are permitted to apply for exemptions for the import of SALW for legitimate defence and security needs, law enforcement and participation in peace-support operations; non-state actors must have the express permission of the relevant state agency of the importing state. The convention aims to (a) prevent the excessive and destabilizing accumulation of SALW within ECOWAS; (b) continue regional efforts to control SALW; (c) consolidate the gains made under the 1998 Declaration of the Moratorium on the importation, exportation and manufacture of small arms;⁶⁴ (d) promote trust through concerted and transparent action on SALW controls within ECOWAS; (e) build institutional and operational capacities of the ECOWAS Executive Secretariat and member states to curb SALW and ammunition proliferation; and (f) promote the exchange of information and cooperation.⁶⁵ The convention is of interest for an ATT reporting mechanism in terms of the transparency and exchange of information obligations it places on states parties.

The convention requires states parties to establish national databases containing information on SALW transfers and the establishment of an ECOWAS regional database and register of SALW.⁶⁶ ECOWAS member states are required to transmit an annual report on their orders or purchases of SALW to the ECOWAS Executive Secretariat, which is obligated to present an annual report at the summit of heads of state and government.⁶⁷ Member states are also required to establish a register of SALW for use in peacekeeping operations, with this information to be presented to the ECOWAS Executive Secretariat along with information on SALW seized, collected and destroyed during peace operations.⁶⁸ The ECOWAS Convention contains neither a requirement for any of this information to be made publicly available nor a requirement for it to remain confidential.

⁶³ ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials, signed 14 June 2006, entered into force 29 Sep. 2009, <http://www.ecosap.ecowas.int/en/ecosap/strategic_docs/convention/convention_small_arms.pdf>.

⁶⁴ For the text of the moratorium see UN Regional Centre for Peace and Disarmament in Africa in cooperation with the Norwegian Institute of International Affairs (NUPI) and the Norwegian Initiative on Small Arms Transfers, *The Making of a Moratorium on Light Weapons* (NUPI: Oslo, 2000), pp. 49–54.

⁶⁵ ECOWAS Convention (note 63), Article 2.

⁶⁶ ECOWAS Convention (note 63), articles 9 and 10.

⁶⁷ ECOWAS Convention (note 63), Article 9(4).

⁶⁸ ECOWAS Convention (note 63), Article 11.

3. Challenges for reporting implementation of an arms trade treaty

A common characteristic of all of the UN instruments to which UN member states are required, requested, invited or encouraged to report on international arms transfers or transfer controls is the lack of universal participation. A range of reasons has been offered to explain why some states cannot or choose not to provide regular reports on arms transfers and transfer controls to UN instruments. Groups of governmental experts tasked with considering the operation and development of UNROCA and researchers at the Small Arms Survey and UNIDIR have identified a range of factors that influence reporting levels.⁶⁹ These include security and political factors, such as involvement in interstate armed conflict, high-level tensions with neighbouring states or regional rivals, or severe domestic political crises. Another important factor is state capacity, with lack of material and human resources, designated contact points and poor inter-agency cooperation highlighted as the main obstacles to reporting in this regard. A lack of awareness of reporting obligations, procedures and standardized reporting templates has also been offered to help explain the poor reporting records of some states. Additional factors include cultures of secrecy within the state agencies that hold relevant information; ‘reporting fatigue’; questions about the relevance of reporting for particular states; and the lack of benchmarks or indicators of success with regard to implementation.

This chapter provides information from the first attempt to seek a comprehensive overview of the challenges that states face relating to capacity issues when engaging with multilateral reporting mechanisms on international arms transfers and export controls. To gain a better understanding of the challenges that states face when reporting to UNROCA, the POA and the UN Legislation Exchange, SIPRI distributed three questionnaires to relevant national contact points to gather information on the number of government agencies involved in providing information for reports, the technical challenges faced and mechanisms that might facilitate reporting (table 3.1). This chapter presents the results of the survey to allow lessons to be learned from reporting to existing UN arms transfer and transfer control instruments for an ATT reporting mechanism.

Survey of challenges in reporting to United Nations instruments on international arms transfers and transfer controls

In order to test some of the hypotheses outlined above as factors limiting or having a negative impact on state reporting to UN instruments, two sets of questionnaires on reporting to UNROCA, the POA and the UN Legislation

⁶⁹ United Nations (note 18), para. 38; Cattaneo and Parker (note 23), pp. 133–36; and Parker, S., *Improving the Effectiveness of the Programme of Action on Small Arms: Implementation Challenges and Opportunities* (UNIDIR: Geneva, 2011), p. 5.

Exchange were devised and distributed to NCPs, ministries of foreign affairs and national missions to the UN in New York and Geneva. The first set of questionnaires was distributed to NCPs for states that had reported to UNROCA, the POA and the UN Legislation Exchange in 2008–10. The second set of questionnaires was distributed to NCPs for states that had not reported to UNROCA and the POA in 2008–10. The questionnaires asked for information on the ministries and agencies involved in the provision and collection of information for national reports, the time required to complete such reports, the barriers to reporting and the mechanisms used to overcome them. To provide a control group, separate questionnaires were sent to states that are obligated to report on implementation of the 1997 Anti-Personnel Mine Convention (APM Convention) and the 2008 Convention on Cluster Munitions (CCM), which are legally binding instruments with high numbers of states parties.⁷⁰

The questionnaires were translated into Arabic, French, Russian and Spanish and distributed in March 2011 with reminders sent in April 2011. By 31 May 2011, 37 states had returned 59 completed questionnaires detailing processes and challenges for reporting to UNROCA, the POA and the UN Legislation Exchange. Of these 37 states, 4 states returned questionnaires for all three instruments, and 14 states returned questionnaires for two. Of this latter group, 9 had never reported to the UN Legislation Exchange.

In addition, 28 states provided responses on reporting under the APM Convention, including 6 states that did not provide responses for the three UN instruments. Nine states provided responses on the CCM, including 2 states that did not reply to any other questionnaire. A list of the states that returned questionnaires to SIPRI appears in appendix A. Questionnaire responses from states that have given permission for publication are on the SIPRI website.⁷¹

Lessons learned for an arms trade treaty reporting mechanism

The report-compilation process

The SIPRI questionnaires asked NCPs to provide information on the government ministry that is responsible for compiling national reports and the government ministries or agencies responsible for supplying relevant information for those reports. The responses highlighted the extent to which compiling national reports requires the development of effective systems of inter-agency communication and the various ways in which states allocate responsibility in these policy areas.

⁷⁰ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (APM Convention), opened for signature 3–4 Dec. 1997, entered into force 1 Mar. 1999; and Convention on Cluster Munitions, opened for signature 3 Dec. 2008, entered into force 1 Aug. 2010, <<http://treaties.un.org/Pages/CTCTreaties.aspx?id=26>>. As of 1 Jan. 2011, the APM Convention had 156 parties and the CCM 49 parties. For a full list see Bodell, N., 'Arms control and disarmament agreements', *SIPRI Yearbook 2011: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2011), pp. 475–76.

⁷¹ See <http://books.sipri.org/product_info?c_product_id=426>.

Table 3.1. Responses to the SIPRI questionnaires on reporting to United Nations instruments on international arms transfers and transfer controls

Not all states responded to all questions, often because the state had not reported to the particular UN instrument in recent years.

	UNROCA	POA	UN Legislation Exchange
No. of states responding	26	26	7
No. of reporting states	24	24	7
No. of non-reporting states	2	2	–
<i>Ministry or government agency responsible for compiling reports</i>			
Ministry of foreign affairs	16	16	6
Ministry of defence	4	2	–
Other ministry or agency	3	1	–
Multiple agencies	3	5	1
<i>Ministry or government agency involved in supplying information for reports</i>			
Ministry of foreign affairs	2	3	1
Ministry of defence	4	1	–
Other ministry or agency	6	7	2
Multiple agencies	12	13	4
<i>Time spent compiling reports</i>			
1 day or less	4	1	1
2–10 days	10	13	2
11–30 days	7	7	4
31 days or more	1	1	–
No information provided	1	2	–
<i>Challenges in compiling reports</i>			
No. reporting challenges	13 ^d	19 ^d	5
No. indicating challenges	7	7	2
No. of respondents with more than 1 challenge	4	5	2
<i>Types of challenge</i>			
Lack of time	3	7	–
Lack of capacity	7	6	2
Information availability	6	7	2
Coordination problems	1	2	2
Other challenges	4	4	1
Mechanisms developed to overcome challenges	3	8	3
Mechanisms involving inter-agency coordination	2	6	3
<i>Use of online standardized reporting templates</i>			
Aware of template	23	19	..
Uses template	21	12	..
Finds template useful	20	12	..

– = no relevant responses; .. = not applicable; POA = United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; UN Legislation Exchange = UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology; UNROCA = UN Register of Conventional Arms.

^d These totals include 2 states that did not report to the UN instrument.

Sources: SIPRI questionnaires on UNROCA, POA and the UN Legislation Exchange.

The overwhelming majority of responses to questionnaires regarding UNROCA, the POA and the UN Legislation Exchange cited the ministry of foreign affairs as responsible for compiling national reports (see table 3.1). However, several states indicated that the ministry of defence or the ministry of internal security is responsible for compiling national reports for UNROCA or the POA. Five of 26 respondents indicated that more than one government ministry or agency is responsible for compiling the national report for the POA. States were also asked which government ministry was responsible for supplying the information for national reports. For UNROCA, states were asked to provide the origin of the information supplied on imports and exports of arms; for the POA, states were asked which government ministry is responsible for supplying the information for the sections of the report dealing with transfer controls and brokering controls; and for the UN Legislation Exchange, states were asked to provide the origin of the information contained in their national submission. In most cases, the collection and submission of information required inter-agency or inter-ministry communication (see table 3.1).

Time spent compiling the reports

NCPs were asked to estimate how many workdays were spent compiling each national report. The responses not only highlighted the burden on resources that compiling and submitting national reports can place on national bureaucracies, but also showed considerable differences in the amount of time that the collection of information takes for different states. For example, while estimates for the time taken to prepare a national report for UNROCA ranged from less than one working day to six weeks, estimates for the POA stretched up to 90 working days. Estimates for the UN Legislation Exchange ranged from 2 to 30 working days (see table 3.1). For both UNROCA and the POA, eight states indicated that compiling each national report took 11 working days or more.

The wide variation in responses may have been due to differences in how the question was interpreted. For example, in their responses to the questionnaire on the POA, some states appeared to provide an estimate of the time between the initiation of the process of information gathering to the submission of the final report. One state answered that it took 30 days ‘from issuing request for information to submission’. In contrast, some states appeared to provide an estimate of the number of days spent working on the submission, including both the collection of data and the compiling of the report. Finally, some states appeared to provide an estimate of the number of days spent drafting the submission and excluded time spent on data collection. For example, one state answered that it took ‘about a week (apart from information gathering)’. For UNROCA, one respondent stated that compiling information for UNROCA is ‘part of the regular record-keeping and reporting processes’.

Challenges encountered in compiling national reports

The SIPRI questionnaires asked states to indicate whether they faced the following challenges when compiling their national report for UNROCA, the

POA and the UN Legislation Exchange: (a) lack of time, (b) lack of capacity, (c) lack of available information, or (d) other challenges. The responses highlighted the range of different administrative issues that confront states seeking to compile national reports, particularly those associated with the POA.

For all three UN instruments, a majority of respondents gave information on challenges they encountered in compiling their national report. The other states either indicated that compiling their national report did not present any major challenges or did not provide information on the challenges that they faced. However, of the 59 questionnaires received for UNROCA, the POA and the UN Legislation Exchange, only 4 came from states that had not reported. Therefore, the majority of responses came from states that face challenges but are still able to provide a report. It is noteworthy that a higher share of respondents reported challenges in reporting on transfer controls for the POA and the UN Legislation Exchange than for reporting on actual transfers to UNROCA.

According to questionnaire responses for UNROCA and the POA, the challenges most frequently cited related to the availability of information and lack of capacity, although respondents to the POA questionnaire also highlighted that lack of time was a challenge (see table 3.1). Respondents to the questionnaire on the UN Legislation Exchange did not share a common challenge or challenges. However, although not provided as an option in the questionnaire, a number of respondents stated that inter-agency coordination and cooperation was a challenge when compiling reports.

Measures taken to overcome these challenges

The SIPRI questionnaires not only sought information on existing challenges, but also on steps that had been taken to address them, in particular whether specific mechanisms had been developed. The responses highlighted the important role that improved mechanisms for inter-agency coordination have played in helping a number of states develop better systems for the process of compiling national reports (see table 3.1).

Very few of the respondents to the UNROCA questionnaire stated that they had developed mechanisms to help them overcome challenges for compiling reports. In contrast, 8 of the 19 respondents that faced challenges in reporting to the POA reported developing mechanisms to help overcome these challenges. This was also the case with 3 of the 5 respondents that faced challenges in reporting to the UN Legislation Exchange. Respondents to the questionnaire on the POA mentioned regular meetings between relevant government departments and agencies as an important mechanism for helping to compile reports. Specific examples include the establishment of a ‘coordination board’ and a ‘national commission on SALW’ with overall responsibility for compiling and submitting the national report.

Assistance provided by the United Nations

In addition to seeking views on national efforts to overcome challenges in reporting to UN instruments, NCPs were asked to provide feedback on assistance

received from the UNODA. In particular, opinions were sought on the different reporting templates and online reporting tools offered by the UNODA to assist states in producing national reports. The responses highlighted the extent to which standardized reporting templates can assist states with compiling and submitting reports; they also underscored the fact that online reporting tools can be of limited use, particularly when compiling a report involves input and communication between several different government ministries or agencies. The majority of respondents to the questionnaires on UNROCA stated that they used the standardized reporting form and found it to be helpful (see table 3.1). However, while 19 states reported awareness of an online reporting tool to assist with the compiling and submitting of a national report for the POA, only 12 respondents make use of it. In explaining why the online reporting tool was not used, one state noted that there were ‘many different departments and divisions involved in producing’ their national report and that it was ‘easier to have them make updates to the previous report rather than filling out the online form’. Another state indicated that it had difficulty accessing the Internet to make use of the online reporting tool because of financial constraints.

4. Non-governmental monitoring of international arms transfers

Civil society organizations have played a crucial role in promoting the ATT initiative and it is to be expected that NGOs will monitor implementation of an ATT at the national level and assess its role in helping to prevent illicit and irresponsible arms transfers. Specific activities for non-governmental monitoring could include (a) gathering information on states' arms transfers, (b) uncovering illegal or illicit arms transfers, (c) assessing the extent to which states are complying with the criteria of an ATT, and (d) evaluating whether states' transfer control systems allow them to implement an ATT effectively. Such monitoring would therefore be comparable to the work carried out by the Landmine and Cluster Munition Monitor in overseeing states' implementation of the APM Convention and the Convention on Cluster Munitions, by European NGOs to assess arms exports from EU member states against the criteria of the EU Common Position, or a number of international NGOs in highlighting arms transfers that violate UN arms embargoes or are subsequently used in the commission of human rights abuses or violations of international humanitarian law.

This chapter examines a selection of existing NGO monitoring activities to assess their potential lessons for non-governmental ATT monitoring activities. Several types of goal for monitoring arms transfers and assessing national transfer controls can be identified, such as (a) monitoring and measuring the international arms trade and arms flows to and from particular states, (b) highlighting concerns with arms transfers to destinations of conflict or tension, and (c) evaluating states' transfer control systems. These non-governmental monitoring activities use different methodologies and generate various types of information. While some NGOs rely exclusively on open-source information to achieve their goals, others use a mixture of open-source and confidential information. Methods for presenting findings vary (e.g. searchable databases, regular reports or ad hoc reports) but they are all made publicly accessible. Thus, these approaches could suggest tools and methodologies for monitoring implementation of an ATT.

Monitoring and measuring the international arms trade

Monitors of implementation of the ATT may seek to collect information on international arms transfers—the value of the international arms trade, relationships between importers and exporters, and the volume and types of weapons being transferred. However, constructing an objective picture of the international arms trade is a difficult task.⁷² First, there is no globally agreed definition of 'arms'. Second, there is no common agreement on what types of activities constitute the

⁷² For a more detailed discussion see Holtom, P. and Bromley, M., 'The international arms trade: difficult to define, measure, and control', *Arms Control Today*, Jul./Aug. 2010.

arms trade. Third, there is a lack of transparency on the part of many arms suppliers and recipients which makes data collection difficult. Despite these limitations, there are a number of existing efforts aimed at measuring the international arms trade in a consistent and universal basis.

The SIPRI Arms Transfers Database

The SIPRI Arms Transfers Programme maintains the publicly available SIPRI Arms Transfers Database, which is produced using a wide range of open source materials. The database includes information on all international transfers of major conventional weapons since 1950 and is intended to fulfil a number of goals. These include (a) identifying suppliers and recipients of major conventional weapons; (b) increasing the transparency of the international arms trade; and (c) helping to identify destabilizing build-ups of weaponry.⁷³ The SIPRI Arms Transfers Database covers transfers of major conventional weapons, their licensed production and certain components to states' armed forces, paramilitary forces and intelligence agencies; to armed non-state actors involved in armed conflict; and to international organizations. It does not include most SALW, trucks, artillery under 100-mm calibre, ammunition, support equipment, and most components, services and technology transfers. These items are excluded because of the limited availability of open source information for all states.

The SIPRI Arms Transfers Database can be used to generate trade registers and statistical data (enumerated in trend/indicator values, TIVs). Trade registers provide information on each deal included in the database. This includes the supplier and recipient, the type and number of weapon systems ordered and delivered, the years of order and delivery and, where available, the financial value of the deal. TIVs are a measure of the volume of deliveries of major conventional weapons and can be used to measure a particular country's share of the overall import or export market or the rate of increase or decline in its imports or exports.⁷⁴ The database is updated every spring with data on transfers during the preceding calendar year. A brief overview of trends in international arms transfers is published to coincide with annual public update of the database.⁷⁵ The database also provides the basis for other SIPRI analyses of international arms transfers, including the international arms transfers chapter in the SIPRI Yearbook.⁷⁶

⁷³ See SIPRI Arms Transfers Database, <<http://www.sipri.org/databases/armstransfers>>.

⁷⁴ SIPRI ascribes a TIV to each weapon or subsystem included in the database based on the known unit costs of a core set of weapons. Weapons for which a cost is not known are compared with core weapons based on a variety of factors, including performance characteristics and the period in which the weapon was produced. The volume of transfers to and from individual suppliers and recipients in the database is calculated using the TIV and the number of weapon systems or subsystems delivered in a given year. For more information see SIPRI Arms Transfers Database, 'Background information and explanations', <<http://www.sipri.org/databases/armstransfers/background>>.

⁷⁵ See Holtom, P. et al., 'Trends in international arms transfers, 2010', SIPRI Fact Sheet, Mar. 2011, <http://books.sipri.org/product_info?c_product_id=421>.

⁷⁶ Holtom, P. et al., 'International arms transfers', *SIPRI Yearbook 2011* (note 70), pp. 271–91.

Box 4.1. Comtrade

Customs authorities identify imports and exports of particular goods for statistical and tariff purposes via an internationally agreed Harmonized Commodity Description and Coding System (HS). The HS is an internationally standardized system composed of 5000 commodity groups, each of which is identified by a six-digit code maintained by the World Customs Organization (WCO).^a Almost 200 countries, responsible for about 98 per cent of world trade, use the HS codes. Information can be collected on the weight, value, number of items, and destination or origin of the goods. In all cases the importer or exporter performs the identification and coding of the goods. Over 170 states submit customs data to the UN Statistics Division which then compiles it in the publicly accessible UN Commodity Trade Statistics (Comtrade) database. A number of states use customs data to collect and submit arms import or export data for their submissions to the UN Register on Conventional Arms (UNROCA), the EU annual report on arms exports or for their national reports on arms exports.

The central problem with using customs statistics as a method for collecting complete and comparable data on arms transfers is that the HS is not designed for the specific purpose of collecting data on arms transfers; thus, the identification of certain items is difficult. The HS is based on the technical specifications of an item, rather than its final use. Certain items that could be used for civilian or military use—such as radios, electronic items, helicopters and some vehicles—are more difficult to identify.^b There are also practical problems in the collection of complete and comparable customs data on arms transfers; in particular coverage is far from complete as low-income and least developed countries regularly fail to provide any data to Comtrade and several states that do provide data regularly classify information on arms transfers as confidential.^c

^a The 6-digit HS codes have been supplemented at the regional and national levels to create more finely tuned product categories. E.g. the European Union member states have developed the combined nomenclature (CN) coding system, consisting of over 10 500 8-digit codes by adding 2 additional digits to the internationally agreed HS codes.

^b See United Nations Commodity Trade Statistics Database, <<http://comtrade.un.org/db/>>; and United Nations International Trade Statistics Knowledgebase, 'What is UN Comtrade?', <<http://unstats.un.org/unsd/tradekb/Knowledgebase/What-is-UN-Comtrade>>.

^c For a discussion of the strengths and weaknesses of using Comtrade data for this purpose see *Small Arms Survey 2004: Rights at Risk* (Oxford University Press: Oxford, 2004), pp. 98–100. See also Haug, M. et al., *Shining a Light on Small Arms Exports: The Record of State Transparency*, Small Arms Survey Occasional Paper no. 4 (Small Arms Survey and Norwegian Initiative on Small Arms Transfers: Geneva and Oslo, Jan. 2002), pp. 22–23; and Marsh, N., 'Accounting guns: the methodology used in developing data tables for the Small Arms Survey', Norwegian Initiative on Small Arms Transfers, 14 Nov. 2005, <<http://www.prio.no/NISAT/Publications/Integrating-Small-Arms/>>.

The Norwegian Initiative on Small Arms Transfers database on international transfers of small arms and light weapons

The Norwegian Initiative on Small Arms Transfers (NISAT) database on the international trade in SALW, their components and ammunition monitors and measures international transfers of SALW.⁷⁷ The information contained in the NISAT database also forms the basis for the data published on the international SALW trade by the Small Arms Survey.⁷⁸ The NISAT database is mainly based on customs data on imports and exports of SALW that states submit to the UN Statistics Division and which is made public via the UN Commodity Trade

⁷⁷ Norwegian Initiative on Small Arms Transfers (NISAT), <<http://www.prio.no/NISAT>>.

⁷⁸ Small Arms Survey, <<http://www.smallarmssurvey.org/>>.

Statistics Database (Comtrade) database (see box 4.1). NISAT ‘mirrors’ the import and export data of suppliers or recipients in order to internally verify the data. It also makes use of background information on international transfers of SALW submitted to UNROCA, the EU Annual Report on arms exports and national arms export reports. NISAT’s data series dates back to 1992 and gives yearly information on the financial value of SALW transfers, broken down by supplier and recipient. Although the Comtrade data on imports and exports of SALW is more exact and better defined than that of other types of military equipment, it is not without its problems.

Documenting arms transfers to destinations of conflict or tension

Monitors of the implementation of the ATT may seek to collect information on arms transfers to destinations of conflict or tension. This could serve to uncover illicit arms transfers, highlight potential risks of diversion within the licit arms trade, and draw attention to transfers which may contravene the criteria laid down in the parameters of an ATT. Several civil society organizations produce reports on arms transfers to particular destinations of conflict or tension in order to raise awareness of the dangers of supplying arms to these locations to influence reporting states’ risk assessments and decisions on the future supply of arms. In many cases, these reports have focused on destinations that are subject to UN arms embargoes. For example, during the early 2000s, Amnesty International, Global Witness, Human Rights Watch, International Alert and the International Crisis Group produced reports detailing alleged violations of a number of UN arms embargoes, including those on the Democratic Republic of the Congo, Liberia, Sierra Leone and Sudan.⁷⁹ In certain cases, the reports have provided information for UN sanctions committees and have been investigated further by UN panels of experts tasked with monitoring implementation of UN sanctions and investigating alleged violations.

Attention has also been paid to arms transfers to regions of tension and conflict that are not subject to a UN arms embargo but which have become a target for international attention due to alleged violations of human rights or international law. For example, in recent years Amnesty International, Human Rights Watch and the Swedish Peace and Arbitration Society have produced reports that have detailed arms transfers to a range of destinations, including Israel, Guinea,

⁷⁹ E.g. Global Witness (GW) and International Transport Workers Federation, *Taylor-made: The Pivotal Role of Liberia’s Forests and Flag of Convenience in Regional Conflict* (GW and International Transport Workers Federation: London, Sep. 2001); Human Rights Watch, ‘Weapons sanctions, military supplies, and human suffering: illegal arms flows to Liberia and the June–July 2003 shelling of Monrovia’, Human Rights Watch Briefing Paper, 3 Nov. 2003, <<http://www.hrw.org/en/news/2003/11/05/liberia-guinea-flouts-arms-embargo>>; Amnesty International, ‘Democratic Republic of Congo: arming the East’, London, 5 July 2005, <<http://www.amnesty.org/en/library/asset/AFR62/006/2005/en/103a9c0c-d4d2-11dd-8a23-d58a49c0d652/afr620062005en.html>>; and Control Arms, ‘Bullets from Greece, China, Russia and United States found in rebel hands in Democratic Republic of Congo’, London, 16 Oct. 2006, <http://www.amnesty.org.uk/news_details.asp?NewsID=17137>.

Rwanda and Sri Lanka.⁸⁰ In certain cases, these reports have not focused on transfers to a single region but have instead sought to draw attention to transfers to a range of destinations where violations have allegedly occurred.⁸¹

Presumably, these organizations will continue to uncover illicit arms transfers and highlight potential risks of arms being diverted from the licit arms trade after the entry into force of an ATT, as well as draw attention to transfers that may contravene the criteria of an ATT. The expertise gathered and the methodologies employed in these areas could be of use for monitoring states' implementation of an ATT.

Evaluating states' arms transfer controls

Monitors of the implementation of the ATT may seek to carry out assessments of the extent to which states parties' arms transfer controls conform to the requirements laid down in the treaty. Making this information available would help to provide a clear picture of whether states are meeting the requirements of an ATT at the national level and also indicate where improvements could be made and outreach and assistance efforts provided. In addition, monitors may seek to evaluate the extent to which states' arms exports are in line with the criteria of an ATT. A number of NGOs are engaged in both areas, while in certain states parliamentary bodies also play a role. In all cases, the aim is to provide a level of transparency in and oversight of how a state is structuring and implementing its arms transfer controls and meeting its international and national commitments.⁸²

Evaluating states' arms export controls

Several approaches have been taken to try to systematically collect information on states' transfer control systems. Most concentrate on controls on the transfer of SALW or dual-use goods. They provide important lessons for equivalent efforts for monitoring arms transfers under an ATT.

The Biting the Bullet project produced a report (known as the Big Red Book) for the POA's 2003 and 2005 biennial meeting of states and for the 2006 review conference analysing how states and regional organizations were implementing

⁸⁰ Amnesty International, *Guinea: 'You Did Not Want the Military, So Now We Are Going to Teach You a Lesson': The Events of 28 September 2009 and Their Aftermath* (Amnesty International: London, Feb. 2010); Human Rights Watch (HRW), Arms Project, 'Arming Rwanda: the arms trade and human rights abuses in the Rwandan war', vol. 6, no. 1 (Jan. 1994); Lindberg, J. et al., Swedish Peace and Arbitration Society, *Arms Trade with Sri Lanka: Global Business, Local Costs* (Pax: Stockholm, 2011); and Amnesty International, *Israel-OPT: Fuelling Conflict, Foreign Arms Supplies to Israel/Gaza* (Amnesty International: London, Feb. 2009).

⁸¹ E.g. Amnesty International, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights* (Amnesty International: London, 9 May 2006).

⁸² Oversight of the implementation of state's arms export policies is also provided by various publishing houses and research institutes that produce systematic or ad hoc analyses of various states' arms exports. Examples include the reports produced by Jane's and Forecast International and nationally focused research institutes such as the Centre for Analysis of Strategies and Technology (CAST) in Russia and the Center for Army Conversion and Disarmament Studies in Ukraine. Since the resulting research products are not aimed at critiquing or evaluating the implementation of a states' arms export policies, these reports are not considered in this Policy Paper.

the programme.⁸³ The Big Red Book aimed to provide a 'a broad, detailed and reliable empirical overview of progress towards implementing the PoA and associated national, regional and international commitments across all regions of the world since 2001'.⁸⁴ The reports analysed how different states and regions were meeting the commitments included in the POA, including those related to the implementation of SALW transfer controls. NGOs, independent researchers and academics from around the world provided the materials for these reports, using primary and secondary sources. Since the most recent edition of the Big Red Book was published, in 2006, the Small Arms Survey and UNIDIR have published a series of studies assessing states' implementation of the POA. However, these have largely consisted of analyses of states' national POA reports and have generally not incorporated reviews of other sources of information on national transfer control systems.

Evaluating states' arms exports

A number of NGOs, particularly in Europe, assess how states implement their arms export policies. In most cases, these reports are produced by NGOs based in the state in question. However, some NGOs or civil society organizations in one state have carried out assessments of how another state or group of states is implementing their arms export controls. The reports are usually based on data on arms export licences and arms exports that is produced by the government's national licensing authority and include assessments of the appropriateness of particular exports.⁸⁵ For example, since March 1998 Project Ploughshares has published regular reports on the Canadian Government's annual reports on the export of military goods.⁸⁶ The reports analyse the data produced and assess whether the Canadian Government is meeting its international and national obligations in its export licence decision making. Equivalent audits have been produced by several other NGOs (see table 4.1). Other shorter publications have been produced that analyse states' exports during a particular year or to a particular set of destinations.⁸⁷

A number of NGO studies have paid close attention to EU member states' application of the eight criteria of the EU Common Position in their arms export

⁸³ The Biting the Bullet project was undertaken jointly by International Alert, Saferworld and the University of Bradford, in cooperation with the International Action Network on Small Arms (IANSA).

⁸⁴ Greene, O. et al., *Implementing the Programme of Action 2003: Action by States and Civil Society* (Biting the Bullet: Bradford, 2003); Watson, C. et al., *International Action on Small Arms 2005: Examining Implementation of the UN Programme of Action* (Biting the Bullet: Bradford, 2005); and Bourne, M. et al., *Reviewing Action on Small Arms 2006: Assessing the First Five Year of the UN Programme of Action* (Biting the Bullet: Bradford, 2006).

⁸⁵ E.g. Slijper, F., 'Analysis of Dutch arms export licences 2008', Campagne tegen Wapenhandel, Nov. 2009, <http://stopwapenhandel.org/sites/stopdewapenhandel.antenna.nl/files/imported/publicaties/boek_embrochures/Analysis2008ENG_FinalEdit.pdf>.

⁸⁶ Project Ploughshares, Email correspondence with the authors, 3 June 2011.

⁸⁷ See e.g. Lamb, G., 'South African arms exports: a balancing act', ISS Africa, 20 July 2010, <http://www.iss.co.za/iss_today.php?ID=991>; Human Rights Watch, 'Ripe for reform: stemming Slovakia's arms trade with human rights abusers', vol. 16, no. 2 (Feb. 2004), <<http://hrw.org/reports/2004/slovakia0204/slovakia0204.pdf>>; and Saferworld, *The Good, the Bad and the Ugly: A Decade of Labour's Arms Exports* (Saferworld: London, May 2007).

Table 4.1. Examples of regular non-governmental organizations reports evaluating states' implementation of arms transfer controls

Country	Non-governmental organization	Years covered
Canada	Project Ploughshares	1996–2006
Germany	Gemeinsame Konferenz Kirche und Entwicklung	1998–2009
Netherlands	Dutch Campagne tegen Wapenhandel	2004–2009
Spain	Instituto de Estudios sobre Conflictos y Amnistía Internacional, Intermón Oxfam, Greenpeace and Fundació per la Pau	2002, 2005, 2008–2009
United Kingdom	Saferworld	1998, 2001–2004

Sources: Project Ploughshares, <<http://www.ploughshares.ca>>; Gemeinsame Konferenz Kirche und Entwicklung, <<http://www3.gkke.org/>>; Dutch Campagne tegen Wapenhandel <<http://stopwapenhandel.org>>; Instituto de Estudios sobre Conflictos y Amnistía Internacional, Intermón Oxfam, Greenpeace and la Fundació per la Pau <<http://www.intermonoxfam.org/es/page.asp?id=429>>; and Saferworld, <<http://www.saferworld.org.uk>>.

licensing decisions.⁸⁸ Several studies have sought to evaluate the extent to which these criteria are being interpreted in a consistent and uniform manner by EU member states. Most studies highlight examples of lax and conflicting interpretations of the common criteria on the part of different EU member states.⁸⁹ Other studies have analysed data from either the Comtrade Database or the SIPRI Arms Transfers Database to measure trends in EU member states' exports to particular types of destination, such as those engaged in armed conflict or where systematic violations of human rights have been reported.⁹⁰

⁸⁸ Council Common Position (note 51).

⁸⁹ E. g. Crowley, M., 'Transfers to undesirable end users: loopholes in European arms controls', Paper presented at the International Conference on Public Transparency and Arms Trade, Nyköping, 5 May 2001; Amnesty International, 'Undermining global security: the European Union's arms exports', 1 Feb. 2004, <<http://www.amnesty.org/en/library/info/ACT30/003/2004/>>; Saferworld, 'Good conduct? Ten years of the EU Code of Conduct on Arms Exports', June 2008, <<http://stopwapenhandel.org/node/786>>; Vranckx, A. (ed.), *Rhetoric or Restraint: Trade in Military Equipment under the EU Transfer Control System*, Report to the EU Presidency (Academia Press: Gent, Nov. 2010); and Holtom et al. (note 76), pp. 285–91.

⁹⁰ Jackson, T., Marsh, N. and Thurin, A., 'The efficacy of EU export control measures concerning small arms and light weapons', United Nations Institute for Disarmament Research (UNIDIR), *Small Arms and Light Weapons Transfers* (UNIDIR: Geneva, 2005); Trinchieri, L., *Is the 1998 Code of Conduct on Arms Exports Adequate to Support the EU's Promotion of Human Rights? Assessing the Effectiveness of Criterion 2 in Curbing the Exports of Small Arms to Third Countries*, Hamburger Beiträge zur Friedensforschung und Sicherheitspolitik no. 149 (Institut für Friedensforschung und Sicherheitspolitik: Hamburg, Jan. 2008); and Bromley, M. and Brzoska, M., 'Towards a common, restrictive EU arms export policy? The impact of the EU Code of Conduct on major conventional arms exports', *European Foreign Affairs Review*, vol. 13, no. 3 (2008).

5. Options for reporting on arms transfers and implementation of an arms trade treaty

This chapter outlines the options for providing information to an ATT reporting mechanism on (a) arms transfers, because ‘the ATT should serve as a confidence-building measure that enhances transparency in the conventional arms trade’;⁹¹ (b) key elements of national transfer control systems, in order to show how a state is implementing its commitments under an ATT; and (c) measures to enforce national transfer controls, also to reveal how it is implementing its ATT obligations. The chapter also considers methods for dealing with the option of exchanging information or reporting on denials of transfer licences.

Options for reporting on arms transfers

To date most of the discussion on arms transfers reporting has focused on the relationship between an ATT reporting instrument and UNROCA. One option is for an ATT reporting instrument to replace UNROCA, while another is for an ATT to legally oblige states parties to report to UNROCA. While both options may have appeal as an opportunity for consolidating reporting on international arms transfers, neither is viable. Two reasons can be given for de-linking UNROCA and an ATT reporting instrument. First, not all UN member states will be state parties to an ATT when it comes into force. Merging the two instruments means that the universality of UNROCA, one of its great strengths, may be lost. Second, an ATT and UNROCA have different purposes and scopes of reporting: UNROCA invites states to submit information on their procurement from domestic production and military holdings, areas that are unlikely to be included in an ATT reporting mechanism, while an ATT will cover a broader range of weapons than UNROCA. Therefore, this paper proposes that an ATT should have its own system for reporting international arms transfers that is distinct from UNROCA.

Rather than prescribe a particular model to be used for reporting information on arms transfers to an ATT, the remainder of this section outlines some key issues that a reporting instrument has to confront. First, in keeping with existing practice, it seems reasonable to require states to report on an annual basis. Although some states make information on their arms exports publicly available more frequently, an annual report on arms transfers is expected to be the minimum expectation for the regularity of reporting arms transfers to an ATT.

Second, one of the key lessons learned from the review of existing instruments is that a standardized reporting template greatly facilitates reporting. Therefore, a standardized reporting template that clearly outlines the types of information to be requested from states parties to an ATT seems a sensible approach to take. The types of information to be requested could include: importer state, exporter

⁹¹ ‘Chairman’s draft papers: 3 Mar. 2011’ (note 6).

state, ATT category of weapons, quantity (number or value), designation, description of condition of the weapons, description of conditions of the transfer, information on mode of transport and route. This template does not have to be provided in the treaty text, but could be developed by a group of experts for discussion at the first meeting or assembly of states parties.

Third, states will need to decide if information should be provided on authorizations (e.g. licences, contracts and orders), deliveries or both. The rationale for reporting deliveries to UNROCA was linked to its aim of building confidence and identifying destabilizing accumulations of arms. Under an ATT, information on authorizations would demonstrate in a timely manner that a risk assessment had been undertaken. The provision of information on delivery data facilitates cross-checking importer and exporter data to ensure that items were not only shipped from the exporter but also received by the importer. Therefore, ideally, an ATT should require both types of information from states to demonstrate transparency and build confidence. Although an ATT should require states to keep records of authorizations and deliveries to enable such reporting, there are several challenges for states in providing both sets of information.

As noted in chapter 6, methods for limiting the reporting burden will also have to be considered if this option is chosen. Further, as the experience of the EU annual report on arms exports shows, some states have difficulties producing detailed information on deliveries. This is usually the case in states where entities engaged in arms exports are not required to submit reports on their use of authorizations granted. If states are legally obliged to collect and report information on deliveries it may mean that these states may have to create obligations in national law that apply to entities involved in international arms transfers. Additionally, some states are reluctant to release information that they deem particularly sensitive for commercial or national security reasons, which will also play a role in limiting information provided by states under an ATT.

One of the reasons given above for de-linking reporting on arms transfers to the ATT and UNROCA is the different scopes of the two instruments. Nevertheless, in the process of compiling a report on arms transfers for the ATT, states will also collect all of the necessary information for their UNROCA submissions. If the scope contained in the chairman's draft text of March 2011 remains in the final arms trade treaty text, and if states are required to report on transfers of all categories of arms listed, new levels of transparency will be introduced in the international arms trade that require different types of information to be provided for different types of arms.⁹² It is to be expected that reporting on transfers of ammunition, spare parts and components, technology and licensed production arrangements will have to be dealt with slightly differently. While the importing and exporting state, category, description of items and condition should be available for reporting on authorizations, information on 'deliveries' could produce not only an increased bureaucratic burden but also heighten concerns about revealing too much information on national defence capacities, which could put

⁹² 'Chairman's draft papers: 3 Mar. 2011' (note 6).

some states off signing and acceding to the ATT. States may struggle to report for all categories after acceding to the ATT. Reporting is thus an area in which some degree of flexibility is likely to be expected and where the sharing of experiences and practices would help to enable states to collect and report on all transfers.

Options for reporting on transfer controls

If all states parties to an ATT must possess a functioning transfer control system, a future ATT reporting instrument should require states to provide information on the system and how it meets the requirements of an ATT. Based on the experience of reporting on implementation of the POA, the UN Legislation Exchange and implementation of UN arms embargoes it is highly likely that many states will provide information that is of limited utility for assessing the implementation of obligations under an ATT or will provide no information at all. Much more useful information is generated when there is guidance on reporting or an active secretariat, implementation support unit (ISU) or group of (government or civil society) experts. The approach taken for reporting on implementation of UN Security Council Resolution 1540 is the most useful model and inspiration for reporting on implementation of an ATT.

First, after becoming a state party, a state ought to be obliged to provide a one-off report that should be updated following changes to the national transfer control system. An ISU could include a request for updated information on the transfer control system in its annual request for information on arms transfers and enforcement, but states should not be required to report the same information each year.

Second, due to the concerns outlined above regarding the provision of inadequate information concerning transfer control systems, a standardized reporting form could also be drafted for the one-off report on the transfer control system. This could include a request for information on: (a) the laws, regulations and administrative procedures that exercise effective control over import, export, transit, retransfer or brokering of arms; (b) the agencies responsible for implementing transfer controls; (c) lists of arms and military equipment that are subject to transfer controls; and (d) the contact details of a national contact point, and possibly of all relevant agencies involved in implementing and enforcing transfer controls. Documents could be requested to be attached to the report including (a) copies of relevant legislation, regulations, and the like, and (b) samples of documents issued by responsible agencies (e.g. licences, import certificates and end-user certificates). Other types of information might include information on entities registered to engage in the international arms trade (where applicable) and on persons authorized to sign EUCs.

Third, it is still to be expected that states will struggle to produce complete responses. Therefore, two options are available for assisting states in the preparation of their reports: passive guidance or active support. Passive guidance could be offered in the form of a user's guide that provides instruction on the expected contents of a report, whereas active support could be comparable to the

1540 Committee group of experts' review of information provided. Active support would entail information provided by states being entered into national ATT matrices that have been developed by a secretariat, ISU or group of experts, which would use the information provided by states and other open source information to construct as comprehensive a picture as possible of the key elements of each state party's transfer control system. When the quality of information provided under Resolution 1540 is compared to that of the POA and the national legislation exchange, it is evident that states would benefit from active rather than passive support to assist in the implementation of an ATT. However, whether states would be willing to accept and pay for such an option under an ATT remains unclear. Nevertheless, some states and certainly civil society organizations would be likely to seek to use information provided by states to assess compliance with an ATT and might use information from other sources to verify the information provided. Under either scenario, copies of legislation, sample documents and contact points would be entered into databases to facilitate information sharing and exchanges of experience and practice.

Options for reporting on efforts to prevent transfer control violations and combat arms trafficking

In contrast to reporting on arms transfers and transfer controls, there are a limited range of multilateral instruments that require states to report information that will also be made publicly available on efforts to prevent transfer control violations and combat arms trafficking. This is therefore an area in which an ATT reporting mechanism could add value both in terms of demonstrating efforts to combat arms trafficking and also for sharing information on practices and seizures.

States could be requested to respond to a standardized reporting form on (a) measures to prevent transfer control violations, and (b) the effective combating of arms trafficking. With regard to measures to prevent transfer control violations, it could be expected for states to consider providing information on efforts undertaken by licensing authorities and enforcement agencies to interact with industry. Thus, providing information on 'outreach' activities could be useful for demonstrating efforts to prevent transfer control violations and for exchanging ideas in this sphere with other states. This approach also recognizes the key role of non-state actors in international arms transfers and the fact that obligations to implement an ATT will fall on non-state arms producers, brokers and other commercial entities that are involved in the arms trade.

With regard to reporting on effective combating of arms trafficking, some states have supplied information in their national reports on implementation of the POA and even background information to UNROCA on the number of illicit trafficked arms seized. ATT reporting obligations could include exchanging information on seizures of trafficked weapons or on entities involved in diversions and arms trafficking, on routes used, false or dubious EUCs, methods for investigation and prosecution, and prosecutions and convictions for transfer

control violations and arms trafficking. Furnishing such information could be an option for demonstrating how national transfer controls operate with regard to controlling legal arms flows and combating trafficking.

Because states may view some of this information as being too sensitive to report to an ATT reporting mechanism, problems could occur in trying to develop a standardized reporting template to offer guidance and facilitate reporting. In the first instance, states could be invited to provide information in an ad hoc manner to the secretariat to distribute to other states parties. The secretariat, ISU or group of experts could then assess the information received and report its findings at a meeting of states parties or a review conference. A system comparable to that used by the UN Sanctions Committee on Iran might be developed. That committee issued 'Implementation assistance notices' detailing practices used to evade the embargo on Iranian arms exports that gave information on the mode of transport, the entities involved in the incident, the cargo uncovered, the practices used to disguise the cargo and so on.⁹³ Such reports would not reveal information on the intelligence methods used to identify the suspect shipments in the first place, but would represent one way in which states could report information under an ATT to be shared with other states.

Options for exchanging information on licence denials

Several states have raised the possibility of reporting, exchanging information or having a consultation mechanism with regard to export licence denials. Proponents of a denial notification system attached to an ATT cite the experiences of the Australia Group, the EU and the Nuclear Suppliers Group as positive examples of how this could function, with information exchanged on actors and routes of concern. While there appears to be little appetite for making information on denials part of a public transparency instrument, several states have spoken in favour of sharing this information on a confidential basis. However, this proposal fails to take into account that an ATT is not intended to be another supplier regime, but an international treaty open to all states. The regimes and organizations in which this practice is used have developed it over time, building trust among their members to ensure that the information provided is not used to identify potential business opportunities. A denial consultation or notification mechanism does not have to be an element of the ATT from the outset but could be listed as an item for future discussion at a review conference after levels of trust between states parties have been strengthened. A first step towards a denial consultation mechanism could be for states to provide aggregated information on licence denials in their annual reports on arms transfers, as happens in several annual reports on arms exports and the EU annual report on arms exports.

⁹³ United Nations, Security Council Committee established pursuant to Resolution 1737 (2006), 'Implementation assistance notice', 24 July 2009, <<http://www.un.org/sc/committees/1737/selecdocs.shtml>>; and 'Implementation assistance notice #2: Hansa India', 20 Jan. 2010, <<http://www.un.org/sc/committees/1737/selecdocs.shtml>>.

6. Conclusions

The aims, scope and coverage of an arms trade treaty should determine the format and types of information to be provided to an ATT reporting instrument. However, regardless of its content, there are a number of factors that states will have to consider when creating and implementing a mechanism for reporting on implementation of an ATT. This Policy Paper has demonstrated that UN member states are already obligated, requested, invited or encouraged to provide information on both their international transfers of conventional arms and elements of their arms transfer control systems to a range of international and regional reporting instruments. If an ATT is to deliver increased transparency, then existing obligations should serve only as the baseline for what states should provide in reports on their arms transfers and implementation of an ATT. On the basis of the reports on states' views on an ATT from 2007, the reports of the 2008 GGE and the 2009 OEWG as well as the Preparatory Committee meeting chair's draft paper, the ATT can be expected to share a number of goals and objectives with existing UN instruments.

Perceptions of the relevance of an ATT, and of reporting on implementation and arms transfers, will play a role in state reporting to an ATT. None of the existing UN instruments receive reports from all UN member states on their arms transfers or transfer controls. The levels of reporting to these instruments vary over time and are affected by a range of factors relating to conflict and security concerns, political will, and state resources and capacity. However, while security environment and strategic culture, state capacity and technical challenges all impact on levels of voluntary reporting to existing UN instruments, regional levels of reporting differ depending on the purpose of the instrument and reporting. This pattern will be repeated in an ATT, even one that imposes mandatory reporting requirements.

Challenges for reporting to an ATT will reflect those for the three existing UN instruments: limited state resources, capacity and inter-agency cooperation. States' responses to the SIPRI questionnaires indicate that they face a range of challenges when they prepare reports for instruments that contain elements similar to those of the prospective ATT reporting instrument. Improved inter-agency coordination and cooperation via systems of inter-ministerial coordination that enable the generation of, and access to, relevant information are among the main mechanisms to help facilitate reporting to these UN instruments.

The provision of standardized reporting templates helps states when reporting to UN instruments and could be of use for an ATT. However, a standardized reporting template is not a panacea for all problems. For some states, online standardized reporting templates do not ease reporting burdens and the challenges of coordinating inputs from various government agencies. Providing access for online reporting templates to contact points in relevant government agencies could help to spread the burden. Of course, for government agencies with limited access to the Internet this is still a step too far.

For this reason, an active secretariat, implementation support unit or expert group can play a more effective role in facilitating the provision of information that is relevant for assessing implementation than a secretariat that simply collects and reposts information for review by peers and the public. While a passive secretariat or ISU will be expected to send out regular requests for information, a more active secretariat, ISU or group of experts could query reports that seem inaccurate, produce analyses of the content of states submissions and find information from open sources to fill in the blanks in national submissions. Some of these tasks may not be given to those assigned to support the ATT in the first instance but may develop from work to identify areas for international assistance undertaken by interested states and, in particular, civil society.

A number of organizations have already developed tools and methodologies for monitoring arms transfers and the implementation of transfer controls that could also be used to ensure the functioning of a robust ATT. Therefore, as in the case of other international treaties, NGOs will be expected to play an important role in ensuring that an ATT is fully implemented by states parties and in assessing the extent to which it is helping to reduce illicit and irresponsible arms transfers. Potential NGO activities include measuring and monitoring the international arms trade, highlighting illicit or irresponsible arms transfers, and providing detailed assessments of how states are complying with their obligations to implement an ATT. Analysing states' transfer control legislation will be even more important if the ATT's secretariat, ISU or a group of experts is not tasked with generating detailed analyses of states' reports on implementation.

Even the most limited ATT reporting instrument is likely to overlap with a number of existing UN instruments. For example, an obligation to report to an ATT reporting mechanism on arms transfers will clearly overlap to some degree with UNROCA and with other regional reporting instruments that cover arms transfers. Duplication of information provided could occur if states are obliged to report on their transfer control legislation, regulations, procedures and responsible agencies to the ATT as well as to the POA, the UN Legislation Exchange and under UN Security Council Resolution 1540 and arms embargoes. While an ATT reporting mechanism could offer an opportunity to consolidate reporting on conventional arms transfers issues to the United Nations into a single instrument, it is unlikely that this can happen in the near future and should not be among the most immediate considerations of those tasked with drafting an ATT. Reporting to the voluntary UN instruments in addition to reporting to the ATT instrument should not necessarily entail an additional reporting burden, as states will be collecting information for an ATT that can also be submitted to voluntary UN instruments. The fact that there will be some duplication of reporting will have to be accepted. However, there is a danger that states may only supply information to the legally binding ATT and not voluntarily to other UN instruments.

A legally binding ATT with a large number of states parties will dramatically increase transparency in the arms trade. But this transparency could be one of the ATT's weaknesses, with states citing national security and their arms

producers' fear of losing competitive advantage as reasons for shirking their reporting responsibilities. While states exchange information in confidence under a number of intergovernmental mechanisms, information provided to UN instruments on conventional arms transfers and transfer control systems is generally already made available for public scrutiny. Arguably, information exchanged between states within mechanisms maintained by international organizations increasingly tends to be made available to the public, thereby contributing to transparency.⁹⁴ To overcome concerns about transparency states could agree to distinguish between information that is to be exchanged in confidence only among states and information that is to be made public, but such a distinction would be very time-consuming to implement. The ATT represents an all too rare opportunity to increase global transparency of the international arms trade and states should take this chance if they are serious about tackling illicit and destabilizing arms transfers.

⁹⁴ Grigorescu, A., 'International organizations and government transparency: linking the international and domestic realms', *International Studies Quarterly*, vol. 47, issue 4 (Dec. 2003), p. 649.

Appendix A. Questionnaire responses

Table A.1. States responding to the SIPRI questionnaires on reporting to United Nations instruments on international arms transfers and transfer controls

State	UNROCA	POA	UN Legislation Exchange	APM Convention	CCM
Albania	x	x	-	-	-
Belgium	x	-	-	-	-
Bosnia	x	x	-	x	-
Bulgaria	x	x	x	x	-
Cameroon	-	-	-	x	-
Canada	-	x	-	x	-
China	x	-	-	-	-
Cook Islands	x	-	-	x	-
Croatia	-	x	-	x	x
Czech Republic	x	x	x	x	-
Denmark	-	x	-	-	x
Congo, DRC	-	x	-	x	-
Estonia	x	x	-	x	-
Finland	-	x	-	-	-
France	-	-	-	-	x
Germany	x	x	-	x	x
Greece	-	-	x	-	-
Grenada	x	-	-	-	-
Guinea-Bissau	-	x	-	-	-
Iraq	-	-	-	x	-
Ireland	x	x	-	x	x
Japan	x	x	-	x	-
Jordan	-	-	-	x	-
Korea, South	x	-	-	-	-
Latvia	x	x	x	x	-
Liechtenstein	x	x	-	x	-
Lithuania	x	x	-	x	-
Luxembourg	-	-	-	-	x
Macedonia, FYR	-	x	-	x	x
Mauritania	-	-	-	x	-
Mexico	x	-	-	x	x
Netherlands	x	x	-	x	-
Palau	x	x	-	x	-
Peru	-	x	-	x	-
Philippines	x	x	x	-	-
Poland	-	-	x	-	-
Portugal	x	x	-	x	-
Romania	x	x	-	x	-
Slovakia	-	x	-	x	-
Spain	x	-	x	-	-
Sweden	x	-	-	-	-
Switzerland	x	-	-	-	-
Tajikistan	-	-	-	x	-
Thailand	-	-	-	x	-
Uruguay	x	x	-	-	x
Total	26	26	7	28	9

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x = State completed and returned SIPRI questionnaire; APM Convention = Anti-Personnel Mine Convention; CCM = Convention on Cluster Munitions; POA = United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; UN Legislation Exchange = United Nations Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology; UNROCA = United Nations Register of Conventional Arms.

Sources: SIPRI questionnaires on UNROCA, POA, the UN Legislation Exchange, the APM Convention and the CCM.

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**Implementing an Arms Trade Treaty:
Lessons on Reporting and Monitoring from Existing Mechanisms**

In 2012 the United Nations will convene a conference to negotiate an arms trade treaty (ATT). The resulting treaty is expected to legally obligate states to provide information on their arms transfers and transfer control systems. This Policy Paper provides the first comprehensive overview of existing UN instruments that require states to report on their arms transfers, transfer controls and enforcement measures. It outlines the types of information required to assess compliance with an ATT, extracts lessons learned from the existing instruments and identifies areas of duplication. By highlighting the challenges that states face when reporting to existing mechanisms, providing constructive solutions and emphasizing the positive contributions to be made by non-governmental organizations, this report lays the foundation for a relevant and robust ATT reporting mechanism.

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